

Peterson v New York City Dept. of Educ.

2020 NY Slip Op 32542(U)

August 3, 2020

Supreme Court, New York County

Docket Number: 161591/2019

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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SEAN PETERSON,

Petitioner,

INDEX NO. 161591/2019

MOTION DATE 03/06/2020

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION,
RICHARD CARRANZA

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11, 12, 13, 14

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 9, 10, 11, 12, 13, 14

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

ORDERED that the cross motion of respondents to dismiss the petition is granted, and it is further

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements to respondent

DECISION

Petitioner Sean Forrest Peterson, a former probationary teacher employed by respondent the New York City Department of Education (the DOE), brings this proceeding pursuant to CPLR article 78, seeking an order declaring the DOE's termination of

his employment was arbitrary, capricious, unreasonable, an abuse of discretion, lacking a rational basis and in bad faith, and ordering respondents the DOE and Chancellor Richard Carranza to reverse and annul the determination terminating his employment, and reinstate him as an Earth Science teacher with the DOE with backpay and back benefits.

Respondents cross-move, pursuant to CPLR 3211 (a) (5), for an order and judgment denying the petition and dismissing the proceeding, on the ground that petitioner's claims are barred by the applicable statute of limitations.

Petitioner's application for CPLR article 78 relief shall be denied, and the cross motion shall be granted, as petitioner's challenge to the discontinuance of his probationary service is time-barred.

Facts

Petitioner was employed as a Probationary Earth Science Teacher with the DOE in 2011 (petition, ¶ 9). Petitioner's most recent placement was at the Rockaway Collegiate High School in Queens from September 2015 to the end of the 2017-2018 school year (id., ¶ 10). Petitioner's probationary period had been extended on multiple occasions (id., ¶ 23), and was ultimately scheduled to end on September 4, 2018 (id., ¶ 14).

Due to petitioner's rating of "Developing" overall for the 2017-2018 school year, Superintendent Elaine Lindsey informed

petitioner, by letter dated June 26, 2018, that he was terminated as of 60 days from the date of the letter, or August 27, 2018 (id., ¶ 14; see exhibit B, NYSCEF Document Number 3).

On June 27, 2018, petitioner filed an appeal of his denial of completion of probation and rating, pursuant to New York State Education Law 3012-c and the Bylaws of the New York City Department of Education (id., ¶ 15; see exhibit C).

On May 7, 2019, petitioner attended his appeal hearing (id., ¶ 16). On July 31, 2019, petitioner received notice by letter that the denial of completion of probation was affirmed (id., ¶ 24; see exhibit E).

On November 29, 2019, a little more than 15 months after the effective date of his termination, petitioner commenced the instant Article 78 proceeding.

Discussion

CPLR 217 (1) provides that "a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner."

Petitioner's application for judicial review of the DOE's decision to discontinue his probationary service as a high school teacher is time-barred by the four-month statute of limitations applicable to Article 78 proceedings under section 217 of the CPLR.

An article 78 petition to challenge the decision to terminate a probationary employee's service must be brought within four months of the effective date of the termination (see Kahn v New York City Dept. of Educ., 18 NY3d 457, 472 [2012] [DOE's decisions to discontinue employees' probationary service were final and binding within meaning of CPLR section 217 (1) as of the date when employees' probationary service ended and "any suit to challenge the determination must be commenced within four months after that date"]; Matter of Frasier v Board of Educ. of City Sch. Dist. of City of N.Y., 71 NY2d 763, 766-67 [1988] [determination to discontinue probationary employee's service becomes final and binding on that employee on his or her last day at work]).

Therefore, the DOE's decision to terminate a probationary teacher is final and binding within the meaning of CPLR 217 (1) as of the date when the teacher's probationary service ended (see Kahn, supra, 18 NY3d at 461). As the letter of June 26, 2018, set forth that the effective date of petitioner's probationary discontinuance was August 26, 2018, i.e. days from the date of such letter, and petitioner attaches to his petition, such letter stating that his probationary period ended on that date (see petition, ¶ 14; see also exhibit B, NYSCEF Document Number 3), the four-month statute of limitations expired on December 27, 2018. Thus, the petition, which was not

filed until November 29, 2019, is time-barred (see e.g. Matter of Alleyne v. Department of Educ. of the City of N.Y., 176 AD3d 462, 462 [1st Dept 2019] [finding that “[t]he article 78 petition was untimely filed” because “[t]he effective date of petitioner’s termination was June 27, 2016, and she had until October 27, 2016 to challenge respondents’ determination, but commenced this article 78 proceeding on June 16, 2017”]; Matter of Brown v Board of Educ. of the City Sch. Dist. of the City of N.Y., 156 AD3d 451, 451 [1st Dept 2017] [“Petitioner’s claim for reinstatement of probationary service is time-barred, because her petition was not filed within four months of her last work day of September 4, 2012”]; Matter of Zarinfar v Board of Educ. of City Sch. Dist. of the City of N.Y., 93 AD3d 466, 466 [1st Dept 2012] [“Petitioner’s challenge to his termination as a probationary teacher is time-barred because it was not brought within four months of the effective date of termination”]).

Petitioner’s pursuit of administrative remedies, i.e., the appeal of his denial of completion of probation and rating - does not extend or toll the four-month statute of limitations. Notwithstanding that appeal, the DOE’s decision to discontinue petitioner’s probationary service was final and binding on petitioner as of the date he received notice of his termination (see Kahn, supra, 18 NY3d at 462 [Section 4.3.2 of the DOE bylaws “does no more than establish an optional procedure under

which a teacher may ask the Chancellor to reconsider and reverse his initial decision, a decision which is final and which, when made, in all respects terminates the employment of a probationer'"] [emphasis in original], quoting Matter of Frasier, supra, 71 NY2d at 766-67; see also Matter of Nash v Board of Educ. of the City Sch. Dist. of the City of N.Y., 82 AD3d 470, 470 [1st Dept 2011], affd 18 NY3d 457 [2012] ["a petitioner's pursuit of administrative remedies does not toll the four-month statute of limitations"]; Matter of Strong v New York City Dept. of Educ., 62 AD3d 592, 593 [1st Dept 2009] ["Petitioner's time to commence the proceeding was not extended by her administrative appeal of this determination"]; Matter of Triana v Board of Educ. of City Sch. Dist. of City of N.Y., 47 AD3d 554, 557 [1st Dept 2008] ["The law is well established that a decision to terminate the employment of a probationary teacher is final and binding on the date the termination becomes effective, and this is true even in circumstances where administrative review is available"] [internal citations omitted]). Since petitioner, as a probationary employee, was not "[r]equired to exhaust [an administration remedy] before litigating the termination of [his] probationary employment," his article 78 proceeding, brought more than four months after the termination of his probationary service, is time-barred (Kahn, supra, 18 NY3d at 462).

In opposition, petitioner does not contest the fact that the proceeding is time-barred. Rather, petitioner asks this court to overlook the statute of limitations and consider the merits of his untimely petition. He urges (see opposition affidavit, ¶¶ 17-18):

[notwithstanding the expiration of the statute of limitations,] "I urge the court to find that the final decision to not follow the appeal hearing committee's decision and overturn my discontinuance, was arbitrary and capricious, and in bad faith" because "[t]he facts show that I had much more positive feedback about my teaching than any negative".

It is hornbook law that pursuant to CPLR 201, a court has no discretion to extend the statute of limitations period in an article 78 proceeding (see Matter of Clemons v New York City Hous. Auth., 110 AD3d 500, 500 [1st Dept 2013] ["The proceeding is time-barred (see CPLR 217 [1]) and this Court cannot extend the statute of limitations (see CPLR 201)"]; see also Matter of Walker v David, 137 AD3d 459, 460 [1st Dept 2016] ["this Court has no discretion to extend the statute of limitations"])).

8/3/2020

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: