

Nanavati v New Sch. for Social Research
2021 NY Slip Op 31126(U)
April 6, 2021
Supreme Court, New York County
Docket Number: 650163/2020
Judge: Phillip Hom
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PHILLIP HOM **PART** **IAS MOTION 2**

Justice

-----X

SHAUN NANAVATI

Plaintiff,

- v -

THE NEW SCHOOL FOR SOCIAL RESEARCH,

Defendant.

-----X

INDEX NO. 650163/2020

MOTION DATE March 16, 2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ORDERED that the motion is granted in its entirety and the complaint is dismissed with prejudice. The cross motion to amend the Complaint is denied in all respects.

In October of 2018, the Dissertation Committee at Defendant, The New School for Social Research, (“TNS”), gave Plaintiff Shaun Nanavati (“Nanavati”) a failing grade on his dissertation in Psychology resulting in his dismissal from the doctoral program. Instead of pursuing an administrative review of the Committee’s dismissal, Nanavati commenced an Article 78 proceeding (“The First Lawsuit”). In the First Lawsuit, Nanavati alleged that TNS acted in bad faith and discriminated against him because of his “Indian-American ethnic origin.” Specifically, he alleged that in his twelve-year period as a graduate student, he faced discriminatory animus different from the treatment of “non-Indian” graduate students. Among some examples of this discrimination he alleges were that his faculty advisors required him to

produce more work than other graduate students, gave him less support and imposed higher standards while judging his work.

Justice Lynn R. Kotler (NY County) dismissed the Article 78 proceeding in an October 22, 2019 decision and judgment (NYSCEF No. 18). Justice Kotler found that the issuance of a diploma by an educational institution should be awarded great deference based upon public policy, relying on *Matter of Olsson v Board of Higher Educ. of City of N.Y.*, 49 NY2d 408, 414 [1980]). Justice Kotler also held that Nanavati had failed to exhaust his administrative remedies, precluding him from the relief sought in the petition, citing *Watergate II Apartments v Buffalo Sewer Authority*, 46 NY2d 52, 57 [1978]). Justice Kotler agreed with respondents in the Article 78 proceeding that “the documentary record, consisting of the written policies governing this process as well as thousands of pages of communications and memoranda, proves objectively that [petitioner’s] fictional tale could not be more wrong.”

Nanavati filed an untimely appeal and then executed a stipulation discontinuing his appeal with prejudice (NYSCEF No. 19). Later, Nanavati commenced this action (“the Second Lawsuit”) asserting state and federal claims. TNS removed the Second Lawsuit to Federal Court based on the federal claims of discrimination under Title VII and a wage claim under the Fair Labor Standards Act. The parties exchanged extensive “pre-motion letters” before the Hon. Analisa Torres, U.S.D.J. resulting in a briefing schedule for TNS’s pre-answer motion to dismiss. Before the deadline for the filing of the motion to dismiss, Nanavati withdrew his federal claims and asked the District Court to remand the action to this Court. Hon. Analisa Torres issued an April 15, 2020 order remanding the Second Lawsuit to this Court (NYSCEF No. 46).

TNS moves for an order dismissing the Second Lawsuit under the doctrine of collateral estoppel and that most of the alleged acts of discrimination are barred by the statute of limitations. Nanavati fails to state a cause of action under New York Labor Law and essentially agrees that dismissal of that claim is warranted since he fails to include it in his Proposed Second Amended Complaint (SAC). Therefore, the first cause of action in the FAC under New York Labor Law is dismissed with prejudice.

The doctrine of collateral estoppel applies because the factual allegations in the First Lawsuit are precisely the same as in the Second Lawsuit. The two elements necessary for collateral estoppel or issue preclusion to apply are: (1) an identity of issue necessarily decided in the First Lawsuit, and (2) a full and fair opportunity to contest the issue in the prior action (*Halyalkar v Board of Regents*, 72 NY2d 261, 266 [1988]). It is important to note that Nanavati submits the very same affidavits he submitted in the First Lawsuit. Justice Kotler found in the First Lawsuit that “[t]he record reveals that petitioner was unable to satisfy respondents’ program requirements throughout the ten-year period he was allotted to work on his doctoral degree. Indeed, petitioner’s former dissertation advisor raised serious issues about the quality of petitioner’s academic work.” The Appellate Division has held in a case with analogous facts that a prior Article 78 decision collaterally estopped discrimination allegations in a subsequent plenary action (*Matter of Kahn v New York City Health & Hosps. Corp.*, 144 AD3d 600 [1st Dept 2016]).

In accordance with the foregoing, it is ORDERED that the second cause of action under New York State Human Rights Law and the third cause of action under Article 8 of the New York City Administrative Code are similarly dismissed, with prejudice.

The cross motion to amend the complaint is denied in all respects.

The foregoing constitutes the decision and order of this court.

Phillip Hom
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4/6/2021
DATE

PHILLIP HOM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE