

Budhai v New York City Dept. of Corr.
2021 NY Slip Op 31216(U)
April 13, 2021
Supreme Court, New York County
Docket Number: 158407/2019
Judge: Phillip Hom
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. PHILLIP HOM

PART

IAS MOTION 2

Justice

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INDEX NO.

158407/2019

KHAMWATI BUDHAI,

MOTION DATE

3/2/2021

Plaintiff,

MOTION SEQ. NO.

001 002

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION, CITY
OF NEW YORK, CYNTHIA BRANN, ANGEL VILLALONA,
KEITH POWERS, ALICKA AMPRY-SAMUEL, DONOVAN
RICHARDS JR., CARLINA RIVERADECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 24

were read on this motion to/for

DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29

were read on this motion to/for

DISMISSAL

In the interest of justice and judicial economy, motions sequence numbers 1 and 2 are considered together for the purpose of a decision. Upon the foregoing documents, it is ordered that Defendants, City of New York (the “City”) and Department of Correction’s (“DOC”), motion to dismiss the complaint under CPLR §3211(a)(7) is denied as academic, and their motion to dismiss the amended complaint under CPLR §3211(a)(7) is granted.

Background

Plaintiff, Khamwati Budhai (“Budhai”) commenced this action on August 28, 2019 alleging unlawful personnel actions by Defendants. Budhai is a Corrections Officer employed by DOC since June 27, 2016. The City and DOC move to dismiss the complaint under CPLR §3211(a)(7) which is denied as academic since Budhai has amended her complaint and the City and DOC have brought the same motion to dismiss the amended complaint under CPLR §3211(a)(7), which will be considered here.

Motion to Dismiss

When a party moves to dismiss a complaint under CPLR §3211(a)(7), the standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action (*African Diaspora Mar. Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]). Although bare legal conclusions are not presumed to be true on a motion to dismiss under CPLR §3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144 [2002]). Whether a plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss (*Philips S. Beach, LLC v ZC Specialty Ins. Co.*, 55 AD3d 493 [1st Dept 2008]; *African Diaspora Mar. Corp. v Golden Gate Yacht Club*, *supra* at 211).

Budhai alleges causes of action under Civil Service Law §80, New York Public Health Law §18, and race and gender discrimination under the New York State Human Rights Law, the New York City Human Rights Law, and the New York State Constitution. Her claims are addressed below:

a. New York State Civil Service Law §80

Budhai alleges in her amended complaint that "[w]hen, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced, Section 80 Civil Service Law protections must be implemented." Civil Service Law §80 further provides that " . . . suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made [in reverse seniority order]." Budhai's amended complaint does not plead a cause of action under New York State Civil Service Law §80. There are no allegations DOC abolished or reduced her position, nor are there allegations Budhai was suspended or demoted before someone more junior than her, therefore the Court dismisses Budhai's Civil Service Law §80 claim.

b. Discrimination under the New York State Human Rights Law, the New York City Human Rights Law, and the New York State Constitution

Budhai fails to assert any factual allegations in support of her claims that her probationary employment is being terminated because of her gender, and/or race (*Thomas v Mintz*, 182 AD3d 490 [1st Dept 2020]). The amended complaint also fails to state causes of action for a hostile work environment or that similarly situated persons who were male or were not of the same descent (Asian Pacific) as Budhai were treated more favorably than she was. Instead, the amended complaint merely asserts the legal conclusion that DOC's adverse

employment actions were due to race and gender (*Askin v Dept. of Educ. of the City of NY*, 110 AD3d 621 [1st Dept 2013]). Budhai's allegations are mere legal conclusions, and do not make out her claims. Accordingly, the Court dismisses these claims.

c. New York Public Health Law §18

Budhai alleges that DOC's communications with the medical provider regarding her therapeutic care violated New York Public Health Law §18. On December 10, 2018 and January 14, 2019, Budhai submitted documents that allegedly showed she received therapeutic care from Katzman Orthopedics ("Katzman"). DOC learned from Katzman that it did not issue said documents to her. DOC charged Budhai with violations of, among others, DOC Rules and Regulations. On September 18, 2019, Budhai and DOC negotiated a plea agreement where she agreed to forfeit 65 days of compensation time and to waive her rights under New York Civil Service Law §75 in exchange for a settlement of the disciplinary charges.

Budhai's allegation that DOC obtained her personal and health information from Katzman without her consent fails to state a cause of action. DOC verifying information that Budhai submitted to document her visits to Katzman was not a disclosure of her personal health information to DOC, but merely a verification of her visits. Budhai disclosed these visits to DOC presumably to justify her taking sick leave. Therefore, the branch of the City and DOC's motion which seeks to dismiss this cause of action is granted.

d. Discrimination because of caregiver status

Budhai argues that DOC's disciplining her for lateness was discrimination because of her caregiver status in violation of NYSHRL and NYCHRL. She alleges she was late to work because she was taking care of her sick father. Unlike NYSHRL, NYCHRL directly prohibits discriminating against an employee based on her "caregiver status" (NYC Admin. Code § 8-107). The City and DOC move to dismiss Budhai's causes of action alleging discrimination based on caregiver status, arguing that the amended complaint does not contain any allegations connecting her caregiver status to the lateness discipline.

The Court agrees that the amended complaint does not set forth any factual allegations suggesting an animus toward Budhai based on her caregiver status. There is no allegation that the City or DOC was aware of her caregiver status before beginning the disciplinary proceeding. The amended complaint has no factual allegations – except for conclusory assertions – that Budhai's care giver status had any negative impact on her employment status (*Askin v Dept. of Educ. of the City of NY, supra* at 622). Accordingly, the branch of this cause of action alleging that the City and DOC discriminated against Budhai based on her care giver status is dismissed.

Doctrine of exhaustion

In addition to the pleading issues, Budhai's lawsuit is premature. A party objecting to an act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in court (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52 [1978]; *YMCA v Rochester Pure Waters Dist.*, 37 NY2d 371 [1975]; see also *Doe v St. Clare's Hosp. & Health Ctr.*, 194 AD2d 365, 366 [1st Dept 1993]). The doctrine of exhaustion of administrative remedies is premised on the principle that a reviewing court usurps the agency's function when it deprives the administrative tribunal of an opportunity to consider the matter, make its ruling, and state the reasons for its action (see *YMCA v Rochester Pure Waters Dist.*, *supra* at 375).

The exhaustion rule may not apply when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or would cause irreparable injury. Exhaustion of administrative remedies is also not required where only an issue of law is involved, or where the issue involved is purely the construction of the relevant statutory and regulatory framework (*Coleman v Daines*, 79 AD3d 554 [1st Dept 2010]).

In the present case, there is a pending administrative disciplinary proceeding against Budhai that does not have a final determination. Although Budhai has alleged, among other things, constitutional property rights interests in her employment and discrimination based on gender and race, a constitutional claim that hinges upon factual issues reviewable at the administrative level must first be addressed to the agency so that a necessary factual record can be established. The mere assertion that a constitutional right is involved also will not excuse the failure to pursue established administrative remedies that can provide the required relief (*Dozier v New York City*, 130 AD2d 128, 134-135 [2d Dept 1987]).

Since the constitutional claims by Budhai involve factual issues reviewable at the administrative level, her claims are not ripe for this Court's consideration. Once a full administrative record has been developed and the tribunal has decided the issues, Budhai may seek judicial review of any adverse finding.

Conclusion

Accordingly, it is,

ORDERED, City and DOC's motion to dismiss the complaint under CPLR §3211(a)(7) is denied as academic, and the motion to dismiss the amended complaint under CPLR §3211(a)(7) is granted; and it is further,

