

Sutliff v Adams

2022 NY Slip Op 33644(U)

October 21, 2022

Supreme Court, New York County

Docket Number: Index No. 156891/2022

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

KYLE SUTLIFF,

Plaintiff,

- v -

ERIC ADAMS, ASHWIN VASAN, THE CITY OF NEW YORK

Defendant.

-----X

INDEX NO. 156891/2022

MOTION DATE 10/17/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26

were read on this motion to/for ARTICLE 78

The petition is granted to the extent that petitioner is entitled to a religious exemption from the vaccine mandate imposed on police officers in New York City.

Background

Petitioner is a police officer with the NYPD. He submitted an application requesting an exemption from the COVID-19 vaccine mandate on October 26, 2021 (NYSCEF Doc. No. 1 at 3). In his letter, petitioner stated that he was a Christian and had a Christian worldview and that many aspects of the development of the COVID-19 vaccine contradicted his faith. As a result, he claimed he could not get a vaccine because it interfered with his religious beliefs (id.).

On February 15, 2022, respondents denied petitioner’s initial request for a religious exemption (NYSCEF Doc. No. 25). The denial was contained in a “form letter” in which three boxes were checked as reasons for the denial (id.). These reasons were “Objection was personal, political, or philosophical”, “Statement does not appear to be written by the applicant/generic statement that does not support candidate’s request,” and “Objection appears to be based on

verifiable false information, misinformation, fear of unknown origin of vaccine or side effects,”
(*id.*).

Petitioner appealed this decision on February 20, 2022 and wrote a second letter detailing his religious objections to receiving the COVID-19 vaccine (NYSCEF Doc. No. 26).

Respondents denied this appeal on April 25, 2022, stating that petitioner’s appeal “Does Not Meet Criteria” (NYSCEF Doc. No. 20). Petitioner received a letter informing him of his termination should he continue to refuse vaccination (NYSCEF Doc. No. 3). Petitioner commenced this proceeding, and the Court granted a temporary restraining order preventing petitioner from being terminated from his position.

Petitioner contends that agency’s denial of his exemption was arbitrary and capricious because its reasoning was only that petitioner’s appeal “Does Not Meet Criteria,” – it does not describe the criteria nor does it demonstrate what about petitioner’s application failed to meet that criteria. Additionally, petitioner argues that the respondent’s decision is arbitrary and capricious because professional athletes and performing artists are not subject to the vaccine mandate despite working in spaces operated by New York City.

In opposition, respondents claim petitioner was informed of the basis for the denial of his request. Respondents contend the final decision had a rational basis, and that because it was an appeal it did not need to state the reasons for the affirmation. Additionally, respondents state that the documents petitioner submitted did not support his claim that his religious beliefs precluded him from becoming vaccinated. Respondents also state that petitioner’s worry about changes in blood chemistry and the use of fetal cell tissue in the vaccines did not rise to religious beliefs and instead are unsupported scientific assertions. Finally, respondents contend that petitioner never

established he was entitled to an accommodation in his initial petition, but respondent acted amenably by allowing petitioner to work under a weekly testing and face mask requirement.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the petition only to the extent that petitioner is entitled to a religious exemption from the Covid-19 vaccine mandate and may not be terminated by the NYPD due to a lack of Covid-19 vaccine.

In support of his application for a religious exemption, petitioner pointed to his religious upbringing and his views about the vaccines. In response to this letter, respondents denied his request and checked off three boxes. No further explanation was provided. The issue for this Court is the three reasons cited are conclusory and vague. They do not assess petitioner’s specific reasons for requesting a religious exemption or analyze why respondents do not credit petitioner’s assertions.

The first reason identified was that petitioner’s “Objection was personal, political or philosophical.” While that may be a rational justification for denying a request for a religious

exemption, it must be supported by an explanation as to *why* petitioner's objections were not religious in nature. Respondents' memorandum of law in opposition provided a robust analysis of petitioner's claims and gave a clear rationale behind the conclusions respondent reached (NYSCEF Doc. No. 23) – had this been in the initial denial or the City Wide panel, then that would have provided a rationale. But it wasn't. And the issue is not what the respondent's lawyers in Supreme Court think – the issue is what was the basis of the decisions denying petitioner's request were made. The Court is left to guess or speculate about whether respondents viewed petitioner's objection as personal or political or philosophical, two of these three reasons, or, maybe, all three.

Of course, respondents cannot supplement the record by raising a justification for the first time in this proceeding. “Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent” (*Matter of Figel v Dwyer*, 75 AD3d 802, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

The second reason, that the “Statement does not appear to be written by the applicant/generic statement that does not support candidate's request,” is also unaccompanied by any explanation. Petitioner submitted two different letters that detailed his religious beliefs, childhood upbringing, and desire to model his faith for his children (NYSCEF Doc. No. 26). Petitioner's letters were personalized, and the only generic statements were passages of scripture.

The Court has no idea how respondents came to their initial conclusion that petitioner's letter was not written by the petitioner himself, and so the Court cannot properly evaluate whether the initial denial was rational or just a checking of boxes.

The third reason – “Objection appears to be based on verifiable false information, misinformation, fear of unknown origin of vaccine or side effects,”—has no explanation and may have been the easiest issue for respondents to explore. Petitioner contends fetal cell cultures were used in the production of the vaccine yet cites no sources for this information. Respondents presumably have access to ample resources and experts (such as the Department of Health and Mental Hygiene) to decipher the veracity of this claim and explain why this claim was bogus. Instead, respondents waited until this proceeding was filed to even begin to explain why these claims are misleading and not based on a sincerely held religious belief. Again, the lack of any analysis leaves this Court with no tools to evaluate whether the denial was rational or just random checking of boxes.

Finally, after petitioner appealed to a Citywide Panel, petitioner was met with yet another finding devoid of any reasoning. The Panel found that petitioner did not meet the criteria. That determination is a textbook example of an arbitrary and capricious finding. It is completely devoid of reasoning and so the Court is unable to evaluate whether respondents had a rational basis for it. Respondents' assertion that the Citywide Panel did not have to provide any reason for the denial of petitioner's application is without merit and contrary to the applicable law concerning Article 78 reviews of governmental determinations. Even if the Citywide Panel incorporated or referenced the initial denial (it did not), the determination would still be irrational because the initial denial had no reasoning behind it either. Overall, there is no

indication that anybody even read petitioner's arguments, especially given the determination that petitioner's very personal letter was not a statement made by petitioner himself.

Critically, the Court emphasizes that the respondents set up a process by which petitioner and other police officers could request a religious exemption. This is not a situation, such as where an agency fires a probationary employee, where a governmental agency need not provide any reason for its decision (*e.g.*, *Soto v Koehler*, 171 AD2d 567, 567 NYS2d 652 [1st Dept 1991]). Petitioner was entitled to a determination that addressed his reasons for requesting a religious exemption. Respondents did not have to compose a treatise to explain their decision; a brief explanation that acknowledged petitioner's specific request was all that was necessary. But respondents did not do that.

The Court grants the exemption because of the circumstances present. Petitioner's career should not be terminated because his employer failed to justify the denial of his request for a religious exemption. Moreover, respondents did not seek to remand the request back to respondents. Therefore, the only just result is to grant the exemption.

Petitioner's Other Claims

Petitioner's other requests for relief are denied. Among these claims are a request that the Court enjoin respondents from enforcing the vaccine mandate altogether, a declaration that respondents violated petitioner's constitutional rights and that respondents be enjoined from violating petitioner's constitutional rights. Petitioner failed to meet his burden and the Court denies this form of relief.

The vaccine mandate on city employees has been consistently upheld by various courts (*see e.g.*, *Broecker v New York City Dept. of Educ.*, 21-CV-6387(KAM)(LRM), 2022 WL 426113 [ED NY 2022]; *Garland v New York City Fire Dept.*, 574 F Supp 3d 120 [ED NY

2021)).¹ Based on these decisions, there is no basis to find that the vaccine mandate violates petitioner's constitutional rights and, specifically, the free exercise clause. In fact, a vaccine mandate does not violate the free exercise clause under the New York State Constitution at all (*see C.F. v New York City Dept. of Health and Mental Hygiene*, 191 AD3d 52, 139 NYS3d 273 [2d Dept 2020] [finding that a vaccine mandate for measles did not violate the free exercise clause]).

In other words, this proceeding is limited solely to petitioner's individual exemption request and respondents' arbitrary and capricious denial with respect to that application.

The Court also denies petitioner's request for legal fees (contained in the wherefore clause of the petition) as he did not cite any basis for this relief.

Summary

This Court recognizes that there have been many proceedings commenced by city employees who refused to get vaccinated; however, this decision is limited to the individual determination that respondent provided to the petitioner here. That determination was wholly irrational because it was it was conclusory in nature and did not illustrate how petitioner failed to meet the necessary criteria for an exemption. Furthermore, respondent's initial denial is irrational and devoid of any analysis. Asserting boilerplate justifications without assessing petitioner's individual reasons is not a basis to terminate a police officer's employment.

However, the Court rejects petitioner's apparent effort to assert a facial challenge to the vaccine mandate itself or for relief relating to his constitutional rights. Petitioner's religious

¹ The Court recognizes, however, that a court of coordinate jurisdiction recently invalidated the vaccine mandate with respect to police officers as an impermissible new condition of employment (*see Police Benevolent Assn. of the City of New York v City of New York*, 2022 WL 4398685 [Sup Ct, NY County 2022]) and that notices of appeal have been filed in that case. That matter could, of course, preempt the individual dispute raised in this proceeding.

freedom was clearly protected because the very existence of a religious exemption request process, including a Citywide Panel appeal, demonstrates an opportunity for petitioner and those similarly situated to raise religious objections to the mandate. The instant decision by this Court concerns respondents' lackluster and wholly unsupported response.

Accordingly, it is hereby

ORDERED that the petition is granted only to the extent that respondents' determination denying petitioner's application for a religious exemption is vacated; and it is further

DECLARED that petitioner is entitled to a religious exemption from the COVID-19 vaccine mandate and petitioner may not be terminated from the NYPD based upon the lack of the COVID-19 vaccine; and it is further

ORDERED that the petition is denied with respect to the remaining relief requested; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents along with costs and disbursements upon presentation of proper papers therefor.

10/21/2022

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: