

Vignali v City of New York

2023 NY Slip Op 31352(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 151552/2023

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

-----X

BRIAN VIGNALI,

Plaintiff,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY POLICE
DEPARTMENT

Defendant.

-----X

INDEX NO. 151552/2023

MOTION DATE 04/21/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40

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

BACKGROUND

On October 20, 2021, then Commissioner of the New York City Department of Health and Mental Hygiene (“DOHMH”), Dr. Dave Chokshi, issued an order requiring all City employees to show proof of at least one dose of vaccination against COVID-19 by 5:00 p.m. on October 29, 2021 (“City Order”).

The City Order require City employees to provide proof to the agency or office where they work that: (1) they have been fully vaccinated against COVID-19; or (2) they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or (3) they have received the first dose of a two-dose COVID-19 vaccine. The City Order required that any City employee not providing the above-described proof must be excluded from their assigned work location beginning on November 1, 2021.

On or about October 27, 2021, Petitioner, a New York City police officer, submitted a “Reasonable Accommodation Application for COVID-19 Vaccine Exemption for Members of the Service” (“RA Request”) to the NYPD.

On February 15, 2022, the NYPD advised Petitioner that his “reasonable accommodation request was DENIED.” The NYPD provided the following reasoning: Petitioner’s RA Request contained insufficient or missing religious documentation; Petitioner’s written statement did not set forth how his religious tenets conflicted with the vaccine requirement and; Petitioner had no demonstrated history of vaccination/medicine refusal. Petitioner appealed the denial of his RA Request.

On September 23, 2022, Hon. Lyle E. Frank of the New York County Supreme Court enjoined Respondents from placing on leave without pay (“LWOP”) or terminating any members of the Police Benevolent Association. *See Police Benevolent Association of the City of New York, Inc. v. City of New York, et al.*, 2022 NY Slip Op 33185(U).¹ In response, as of September 26, 2022, the NYPD voluntarily refrained from placing on LWOP or terminating members of the NYPD whose requests for exemptions to the vaccine mandate were denied. Petitioner maintained his employment with the NYPD since the City Order requiring COVID-19 vaccination was issued in October 2021.

On October 27, 2022, Respondents notified Petitioner in writing that his appeal was denied and gave him seven days to provide proof of vaccination. Petitioner was advised that if he did not submit such proof, he would be placed on leave without pay. However, pursuant to NYPD policy since September 26, 2022, Petitioner has never been placed on LWOP or terminated.

¹ The decision was recently reversed by the Appellate Division First Department 185 NYS3d 679.

On February 6, 2023, New York Mayor Eric Adams announced that the City “will make vaccination optional for current and prospective city workers effective February 10, 2023, following the expected ratification at the next Board of Health meeting.” *See* Feb. 6, 2023, Press Release, City of New York, Office of the Mayor, annexed to the Affirmation of Bryan Carr Olert (“Olert Aff.”) as Exhibit A. Noting that the vast majority (96%) of the City’s workers and New Yorkers, generally, had been fully inoculated against COVID-19, the Mayor stated that the “vaccine requirement for the primary series of shots has served its purpose, driving rates of vaccination up among the city’s workforce during a critical period in the pandemic.” *Id.*

Following the Mayor’s announcement, on February 9, 2023, the New York City Board of Health (“BOH”) amended the COVID-19 vaccination requirement for City workers. Recognizing that the vast majority of City workers and residents had become vaccinated to some extent, BOH repealed the requirement that City employees be excluded from their work premises if they did not demonstrate proof of vaccination against COVID-19.

PENDING MOTION

On February 16, 2023, Petitioner, Brian Vignali, filed a Verified Petition seeking to annul the determination of Respondents, New York City Police Department, and the City of New York, denying Petitioner’s RA Request from the City’s employee vaccine mandate and to order Respondents to grant such request. Petitioner contends that Respondents’ denial of his RA Request was arbitrary and capricious, in error of law, and in violation of lawful procedure. Respondents cross-move for dismissal arguing that the petition must be dismissed as moot because the vaccine requirement is no longer in effect and Petitioner was neither terminated nor placed on leave without pay.

For the reasons stated below, the court finds that the petition herein is moot and the cross-motion to dismiss is granted.

DISCUSSION

“It is a fundamental principle . . . that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case pending before the tribunal.” *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 713 (1980). This principle “forbids courts” from passing on “academic, hypothetical, moot, or otherwise abstract questions.” *Id.* The subject matter jurisdiction of this court extends only to “live controversies.” *Saratoga Cnty. Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 810 (2003).

The doctrine of mootness is properly invoked when a “change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy.” *Dreikausen v. Zoning Bd. of Appeals*, 98 N.Y.2d 165, 172 (2002). An action will be considered moot “unless the rights of the parties will be directly affected by the determination of the [action] and the interest of the parties is an immediate consequence of the judgment.” *Hearst Corp.*, 50 N.Y.2d at 714. A matter is moot when “petitioners cannot receive the relief requested in the petition.” *Matter of Police Benevolent Assn. of N. Y., Inc. v. State of New York*, 161 A.D.3d 1430, 1431 (3d Dept 2018).

The February 9, 2023, BOH order repealed the requirement that a City employee be excluded from his workplace because he did not provide proof of vaccination against COVID-19. The repeal of this requirement made vaccination optional for current and prospective employees of the City. As a result, Petitioner may continue to refuse to become vaccinated against COVID-19 without being placed on leave without pay or being terminated. Petitioner has

no right or interest that would be affected by the Court ruling on his Petition. *See Hearst Corp.*, 50 N.Y.2d at 714.

Petitioner argues that the denial of his RA Request will become part of his employment history and adversely impact him. However, respondents counter that the administrative determination is not a part of Petitioner's personnel file. Instead, a record of the denial of Petitioner's RA Request is only in Petitioner's confidential EEO file, to which Petitioner's managers do not have access, and any assertion that the denial will affect Petitioner's rights in the future is speculative.

Petitioner argues that this comes under an exception to the mootness doctrine. Exceptions to the mootness doctrine apply when the issue is likely to recur, the issue is a phenomenon typically evading review and there are substantial and novel issues presented. *Hearst Corp.*, 50 N.Y.2d at 714-15.

Both parties cite trial court decisions in analogous circumstances which have either dismissed the petition as moot or ruled on the claim notwithstanding allegations of mootness.

There is no basis in the record before this court to find that the requirement to show proof of vaccination against COVID-19 is likely to recur. *See Matter of Lasko v. Bd. of Educ. of the Watkins Glen Cent. Sch. Dist.*, 200 A.D. 3d 1260, 1262 (3d Dep't 2021); *Matter of Sportsmen's Tavern LLC v. N.Y. State Liquor Auth.*, 195 A.D. 3d 1557, 1558 (4th Dep't 2021).

While no one can predict the future with certainty, even if the pandemic became severe again or the City were to experience some other health crisis that would raise the issue of mandatory vaccinations, any ruling on the petition before this court would not entitle Petitioner to a future exemption from a new requirement.

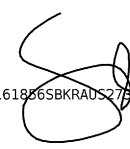
Nor is the issue raised herein either one which typically evades review, or a novel and significant question not previously passed on.

WHEREFORE it is hereby:

ADJUDGED that the petition for relief pursuant to Article 78 is denied, the cross-motion is granted, and the proceeding is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, respondents shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh);].



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4/25/2023

DATE

SABRINA KRAUS, 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