Coates v New York City Dept. of Educ.
2023 NY Slip Op 33665(U)
October 20, 2023
Supreme Court, New York County
Docket Number: Index No. 150027/2023
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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NATASHA COATES,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF EDUCATION, DAVID BANKS

Respondent.

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INDEX NO. 150027/2023

MOTION DATE 01/23/2023

MOTION SEQ. NO. 001

AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

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

Petitioner brings this proceeding to reverse and annul termination of petitioner's employment, effective September 1, 2022, by Respondent New York City Department of Education ("DOE")[1]. Petitioner alleges that her termination was arbitrary and capricious and in violation of lawful procedure. The DOE opposes the instant petition on the grounds that it acted reasonably and in good faith when it terminated petitioner. For the reasons set forth below, the petition is granted.

Background

Petitioner began her employment with the DOE in September 2013, as a substitute teacher. In September 2018, the DOE appointed petitioner to a full-time, early childhood PreK position at P.S.5, under Principal Lena Gates. On or about October 18, 2021, petitioner was reassigned to a 3K class. Petitioner was out on leave for five days during October 2021. Further, the record establishes that petitioner had multiple absences from September 2021 through

[1] The Court would like to thank Craig Supcoff for his assistance in this matter.

January 2022. Petitioner alleges these absences were due to an adverse reaction to COVID vaccination, complications from her back injury, as well as a hospitalization due to COVID in January 2022.

Notwithstanding the petitioner's absences, she covered 13 classes during her scheduled preparatory periods and on June 6, 2022, petitioner requested compensation via email from Principal Gates. Principal Gates then requested a copy via email of the logbook that showed coverages petitioner had provided, but neither party could locate the logbook. On June 23, 2022, Principal Gates issued petitioner a disciplinary letter which accused the petitioner of being insubordinate and unprofessional regarding her inquiry of the location of the subject logbook.

On June 27, 2022, shortly after this email exchange, Principal Gates informed Petitioner via email that she would be discontinuing petitioner's employment with the DOE. Further, on June 27, 2022, Principal Gates signed and issued petitioner an annual professional performance review ("APPR") which indicated petitioner was "unsatisfactory" in three areas and made a recommendation of discontinuance or probationary service. *See* NYSCEF Doc. 30.

On July 8, 2022, petitioner received in the mail a computer-generated letter dated July 3, 2022, informing petitioner of her denial of completion of tenure allegedly sent from District 16 Superintendent Yolanda Martin. Superintendent Yolanda Martin's name was on the letter, but the letter the petitioner received was mailed from the school's address rather than the mailing address of the Superintendent. Despite her name being on the July 3, 2022, letter, Yolanda Martin resigned from her position effective June 30, 2022.

Standard of Review

Article 78 review is permitted, where it is alleged a determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse

of discretion…." NY *CPLR* §7803(3). "Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* "Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard." *Id.* If the court reviewing the determination finds that "[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed." *American Telephone & Telegraph v. State Tax Comm'n* 61 NY2d 393, 400 [1984].

It is well established that a probationary employee may be terminated for any reason or no reason at all, without notice or a hearing, so long as the termination was not made in "bad faith," that is, in violation of the Constitution, a statute, or decisional law. *Reisler* v *New York City Dept. of Educ.*, 133 AD3d 546, 466 [1st Dept 2015]. The onus is on the petitioner to establish bad faith through competent evidence and not speculation. *Witherspoon v Horn*, 19 AD3d 250, 251 [1st Dept 2005].

Discussion

Petitioner argues that despite receiving "satisfactory" ratings throughout multiple educational grades over three different school years, none of her superiors ever observed her in the classroom throughout her probationary period. As a result, the school never provided feedback with pre-observation or post-observation conferences. Petitioner alleges that the DOE never provided any evidence-based feedback on her instruction that would put her on notice of possible termination.

Petitioner also argues that her termination letter violated lawful procedure under New York Education Law and was in retaliation for requesting additional compensation. On or about June 6, 2022, via email, petitioner requested compensation from Principal gates for the 13 prep periods she missed. Shortly after this exchange, Principal Gates issued petitioner her first disciplinary letter on June 23, 2022, and informed her on June 27, 2022, that Principal Gates would be recommending discontinuance of Petitioner's employment with the DOE.

In opposition, the DOE argues that petitioner fails to point to any competent evidence demonstrating the DOE terminated her in bad faith. DOE contends that petitioner was a probationary employee at time of her termination, and she may be terminated for any reason or no reason at all, so long as the termination was not made in bad faith. Petitioner, however, presents sufficient facts to suggest that her termination was in retaliation for seeking payment for petitioner's coverage periods.

This Court found the holding in *Matter of Capece* v *Shultz*, 117 AD3d 1045 [2d Dept 2014] to be instructive. In *Matter of Capece*, a teacher started to receive "unsatisfactory" ratings only after she asked the principal to make up her missed preparation periods, and it was at that point that the petitioner's performance evaluations began to decline. *Id.* at 1046. There the Second Department affirmed the Supreme Court's determination that the school discharged the petitioner in bad faith and reinstated the petitioner to her former position, with retroactive seniority, backpay, and benefits. *Id.*

The Court finds the facts in *Matter of Capece* to be analogous to the instant matter. The petitioner here similarly only received her first unsatisfactory review from the school after she requested compensation for the 13 prep periods she missed. This unsatisfactory rating is what ultimately led to the DOE terminating Petitioner's employment. Contrary to the DOE's

assertions, the record before this Court is devoid of support that the DOE's termination was not in bad faith. Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED that the termination of petitioner's employment is vacated, and the petitioner be reinstated to her position of employment with the respondent New York City Department of Education, with restoration of applicable seniority and back pay; and it is further

ORDERED that respondent is to pay back-pay from the date of termination, September 1, 2022, until October 18, 2023 with interest accruing at the rate of 9% per annum from the date of the original Order of this Court, June 20, 2023 until October 18, 2023; and it is further

ORDERED that respondents shall issue payment within 30 days of the date of this amended order.

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10/20/2023
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE