

**Jaloza v New York City Dept. of Educ.**

2023 NY Slip Op 35004(U)

July 24, 2023

Supreme Court, Queens County

Docket Number: Index No. 706616/2023

Judge: Tracy Catapano-Fox

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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JERIANN JALOZA,

Index No. 706616/2023

Petitioner,

Part 6

Motion Date: June 26, 2023

-against-

Calendar No. 18

NEW YORK CITY DEPARTMENT OF EDUCATION  
and THE CITY OF NEW YORK,

Sequence No. 1

Respondents.

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The following papers numbered 1 to 13 read on this petition for a Judgment and Order pursuant to CPLR Article 78, New York State Human Rights Law, New York City Human Rights Law, and the New York State Equal Protections Clause, declaring that respondents’ religious and medical accommodation policies and practices violate the laws of the State of New York and the City of New York, vacating respondents’ decisions, and reinstating petitioner with full seniority, pension credits, and other benefits including but not limited to back pay, and this cross-motion by respondent to dismiss the petition pursuant to CPLR §3211 and §7804(f).

Papers  
Numbered

- Notice of Petition, Petition, Affirmation, Memorandum, Exhibits.....1-6
- Notice of Cross-Motion, Affirmation, Memorandum, Exhibits.....7-11
- Memorandum in Opposition to Cross-Motion and Reply.....12-13

Upon the foregoing papers and after oral argument before the Court, it is ordered that the petition and cross-motion are determined as follows:

The petition for a Judgment and Order pursuant to CPLR Article 78, New York State Human Rights Law, New York City Human Rights Law, and the New York State Equal Protections Clause declaring that respondents’ religious and medical accommodation policies and practices violate the laws of the State of New York and the City of New York, vacating respondents’ decisions, and reinstating petitioner with full seniority, pension credits, and other benefits including but not limited to back pay is denied. Respondent’s cross-motion to dismiss the Petition pursuant to CPLR §3211 and §7804(f) is granted.

Petitioner's claims arose from her termination from New York City Public School 33 in Queens, New York, on or about November 28, 2022. Petitioner is a disabled individual who was employed by respondent New York City Department of Education as a tenured elementary school teacher. In the wake of the Covid-19 pandemic, respondent City issued a vaccine mandate on August 24, 2021 requiring all DOE staff, including petitioner, to receive the Covid-19 vaccine. The mandate was subsequently amended to include reasonable accommodations for medical and religious exemptions pursuant to the Arbitration Standards issued by Arbitrator Martin F. Scheinman on September 10, 2021.

Petitioner argues that she is entitled to a Judgment and Order pursuant to CPLR Article 78 declaring that respondents' religious and medical accommodation policies and practices violate New York State and New York City law because they are arbitrarily narrow and discriminatory against most disabled individuals. Specifically with respect to the medical exemption, petitioner argues that the policy is extremely reckless because it does not consider severe disabilities aside from "allergies." Petitioner further argues that pursuant to the Arbitration Standards, a medical exemption to the vaccine mandate would be considered upon documentation that the employee cannot receive the vaccine with contraindications delineated in the CDC clinical considerations, namely, history of severe allergic reaction after a previous dose of the vaccine or one of its components, or prior diagnosed allergy to a component of the vaccine. Petitioner argues that under the Arbitration Standards, an employee must receive all three vaccines and develop anaphylaxis to each before that employee will qualify for an exemption. Petitioner argues that she has a bleeding disorder and neurological condition that may be severely exacerbated by the vaccine, and discriminating against those conditions from eligibility for exemption in effect discriminates against hundreds of disabled individuals. Petitioner further argues that the policies and practices violate New York State and City Human Rights Laws because a categorical bar against accommodation of any disability other than "allergies" is an error of law.

Specifically with respect to the religious exemption, petitioner argues the policies and practices favor Christian Scientists and require the government to decide what religions are "recognized as established religious organizations." Pursuant to the policies and practices, a religious exemption must be documented in writing by a religious official from a recognized and established religious organization and will be denied where the leader of the religious organization has spoken publicly in favor of the vaccine, where the documentation is readily available, or where the objection is personal, political, or philosophical in nature. Petitioner further argues that these guidelines essentially undergo an inappropriate comparison and analysis between religions.

Petitioner further argues that she made attempts to secure a reasonable accommodation but was unlawfully denied. In September of 2021, petitioner's supervisors told her she was ineligible for the medical exemption and could not apply because she did not have a prior allergy to the vaccine or one of its components. Petitioner's supervisors then denied her request for a religious

exemption via an autogenerated message that petitioner argues was sent to every single applicant. On November 4, 2021, her appeal was also denied and she was retroactively placed on leave without pay. Petitioner subsequently applied for reconsideration and is still waiting for a determination from the Citywide Panel regarding her religious accommodation request. While petitioner waited for the Citywide Panel determination, petitioner argues that she attempted to secure medical accommodations, but her requests were denied without explanation. Petitioner further argues that the denials of her religious and medical exemptions and reasonable accommodations were arbitrary and capricious, as the denials failed to provide sufficient reasoning to survive review. Based upon the foregoing, petitioner argues that she is entitled to relief pursuant to Article 78, New York State Human Rights Law, New York City Human Rights Law, and the New York State Equal Protections Clause.

Respondents cross-move for dismissal of the Petition pursuant to CPLR §3211 and §7804(f), and argue that vaccine mandate is a lawful condition of employment. Specifically, respondents argue that consistent with its obligation to provide a safe workplace, and in compliance with the lawful vaccine mandate, respondent DOE could not permit unvaccinated employees, absent lawful exemption or accommodation, to continue working during the pandemic. Respondents further argue that petitioner's demands for declaratory relief are now moot because the issue is unlikely to recur, judicial review is readily available, and the issue is not novel. Specifically, respondents argue that there are no facts or circumstances that indicate that respondents will again require their employees to demonstrate proof of the Covid-19 vaccination, as the Board of Health repealed the vaccination requirement in its February 9, 2023 Order. Respondents further argue that petitioner lacks standing to challenge the Impact Arbitration Award because her union negotiated it on her behalf. Respondents further argue that the Article 78 claims are time-barred because petitioner waited more than four months to challenge the exemption and accommodation denials. Respondents further argue that petitioner's New York State and City Human Rights Law and New York constitutional claims should be denied as time-barred because petitioner failed to timely file a Notice of Claim. Respondents further argue that petitioner cannot bring a claim for employment discrimination under the New York State Constitution. Based upon the foregoing, respondents argue that the petition should be dismissed.

In an Article 78 petition seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must decide only whether there is a rational basis for the agency determination, or whether the determination was arbitrary and capricious. (*Matter of Weiss v. County of Nassau*, 176 AD3d 1085, 1086 [2<sup>nd</sup> Dept. 2019].) Under CPLR §7803(4), a proceeding under Article 78 may be commenced to answer the question of whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence. (*See Matter of Astoria Landing, Inc. v. Del Valle*, 188 A.D.3d 1189, 1191 [2d Dept. 2020].) The concept of bad faith is frequently considering in the arbitrary and capricious standard

governing review of Article 78 administrative determinations. (*Matter of Zutt v. State of New York*, 99 A.D.3d 85, 103 [2d Dept. 2012].)

A proceeding pursuant to Article 78 must be commenced within four months after the determination to be reviewed becomes final and binding upon petitioner. (*Hillburg v. New York State Dept. of Transp.*, 138 A.D.3d 1062, 1063 [2d Dept. 2016].) The determination is final and binding when the agency reaches a definitive positive that inflicts actual, concrete injury, and the injury may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party. (*Best Payphones, Inc. v. Dep't of Info. Tech. & Telecomms.*, 5 N.Y.3d 30, 34 [2005].) Although a request for discretionary consideration does not serve to extend the statute of limitations, where the agency conducts a “fresh and complete examination of the matter based on newly presented evidence, an aggrieved party may seek review in a CPLR Article 78 proceeding commenced within four months of the new determination.” (*Matter of Kaneev v. City of New York Env'tl. Control Bd.*, 149 A.D.3d 742, 744 [2d Dept. 2017].)

Under the New York State Human Rights Law, petitioner must establish that she is a member of a protected class, that she was qualified to hold the employment position, that she suffered an adverse employment action, and that the adverse action occurred under circumstances giving rise to an inference of discrimination. (*Gregorian v. New York Life Ins. Co.*, 211 A.D.3d 711, 713 [2d Dept. 2022].) Under the New York City Human Rights Law, petitioner must establish that she was subject to an unfavorable change or treated worse than other employees on the basis of a protected characteristic. (*Golston-Green v. City of New York*, 184 A.D.3d 24, 38 [2d Dept. 2020].) The Equal Protection Clause in the New York State Constitution states that “no person shall be denied the equal protection of the laws of this state or any subdivision thereof.” (*Matter of State of New York v. Myron P.*, 20 N.Y.3d 206, 211 [2012].)

The petition is denied, as petitioner failed to demonstrate entitlement to the relief sought pursuant to CPLR Article 78, New York State Human Rights Law, New York City Human Rights Law, and the New York State Equal Protections Clause. It is noted that petitioner is still appealing some of the agency determinations, including that before the Citywide Panel, and therefore there is no final determination to be considered under Article 78. For example, petitioner alleges her religious appeal was denied on November 4, 2021, but *de novo* review was undertaken by respondent on November 30, 2021, for which petitioner has not received a decision. Therefore, petitioner failed to demonstrate a final determination has been made with regard to her request for a religious exemption. Even assuming there were final determinations with regard to petitioner’s employment status, she failed to demonstrate that the agency determinations which denied her accommodation requests and ultimately terminated her employment were arbitrary and capricious.

With respect to petitioner’s New York State and City Human Rights Law and New York State Equal Protections Clause violations, petitioner failed to demonstrate that she is a member of

a protected class, that she was qualified to hold her employment position, that she suffered an adverse employment action, that the action occurred under circumstances giving rise to an inference of discrimination, and that she was treated worse than other employees on the basis of a protected characteristic. Specifically, petitioner failed to present competent, admissible evidence to demonstrate that she was discriminated against based upon her medical conditions and religious beliefs. Based upon the foregoing, petitioner failed to demonstrate entitlement to the relief sought and respondents therefore demonstrated that the petition should be dismissed.

Based upon petitioner’s failure to establish entitlement to a declaratory judgment, respondents’ cross-motion to dismiss the petition is granted. With respect to petitioner’s Article 78 claims, respondents demonstrated that they are time-barred by the applicable four-month statute of limitations. It is undisputed that petitioner was notified of the denial of her religious accommodation request on November 4, 2021, and was notified of the denial of her medical accommodation request on November 4, 2022. Assuming the determinations became final and binding upon petitioner being notified of the denials and when the actual, concrete injury was inflicted, petitioner would have had to file an Article 78 proceeding with respect to the religious accommodation denial no later than March 4, 2022, and an Article 78 proceeding with respect to the medical accommodation denial no later than March 4, 2023. Petitioner’s argument that the date the denials became binding was the date she was terminated, December 8, 2022, is without merit, as petitioner became aware of the denials and their consequences on November 3, 2021 and November 4, 2022. Petitioner’s suggestion that the Citywide Panel reconsideration could extend the statute of limitations is also without merit, as it is still pending and has not yielded *any* determination. Additionally, petitioner failed to demonstrate that it is a fresh and complete examination based upon newly presented evidence, rather than a determination based upon the prior evidence submitted for the prior determinations.

Accordingly, the petition for a Judgment and Order pursuant to CPLR Article 78, New York State Human Rights Law, New York City Human Rights Law, and the New York State Equal Protections Clause declaring that respondents’ religious and medical accommodation policies and practices violate the laws of the State of New York and the City of New York, vacating respondents’ decisions, and reinstating petitioner with full seniority, pension credits, and other benefits including but not limited to back pay is denied. Respondent’s cross-motion to dismiss the Petition pursuant to CPLR §3211 and §7804(f) is granted. The petition is hereby dismissed.

This constitutes the decision and Order of the Court.

Dated: July 24, 2023



*Tracy Catapano-Fox*  
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 Hon. Tracy Catapano-Fox, J.S.C.