

Matter of Green v City of New York

2001 NY Slip Op 30098(U)

June 25, 2001

Sup Ct, NY County

Docket Number: 101884/01

Judge: William J. Davis

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Davis
Justice

PART 33

Linda a Green et ano
- v -
CITY OF NY

INDEX NO. 101884-01
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to 6 were read on this ~~motion to/for~~ Article 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-3</u>
Answering Affidavits — Exhibits _____	<u>4-5</u>
Replying Affidavits _____	<u>6</u>

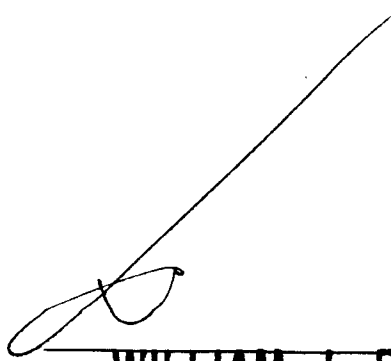
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

Petition
~~motion~~ is decided in accordance with
accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: JUN 25 2001


WILLIAM J. DAVIS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT : NEW YORK COUNTY
IAS : PART 33

----- X

In the Matter of the Application of

LINDA A. GREEN and SHARON LEWIS,

Petitioners,

Index No. 101884/01

-against-

CITY OF NEW YORK and NEW YORK CITY
HUMAN RESOURCES ADMINISTRATION,

Respondents.

For a Judgment and Order Under Article 78
of the Civil Practice Law and Rules.

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WILLIAM J. DAVIS, J:

In this CPLR Article 78 proceeding, petitioners, Linda A. Green and Sharon Lewis, challenge the determinations of the New York City Human Resources Administration (“HRA”), which denied their requests to be reinstated to their former positions.

The basic facts are not in dispute. Both petitioners were employed by HRA. Green held the position of Fraud Investigator Level II and Lewis held the title of Fraud Investigator Level II but was provisionally appointed to the title Associate Fraud Investigator. Green’s employment was terminated on July 7, 1999, pursuant to section 73 of the Civil Service Law, due to her absence from work for a period of more than one year as a result of a non-work related disability. Similarly, Lewis employment was terminated on July 19, 2000, pursuant to section 71 of the Civil Service Law, due to her absence from work for a period of more than one year as a result of a work related injury or disability. Both petitioners were notified that, according to law, they could, within one year after the termination of their medical disability, make an application for a medical

examination for the purpose of determining whether they were fit to perform the duties of their position.

On June 26, 2000, Green notified respondent that she was fit to return to work and requested reinstatement of her Civil Service position of Fraud Investigator Level II. Lewis notified respondents on February 17, 2000 that she was fit to return to work as an Associate Fraud Investigator Level I. Both petitioners submitted to physical examinations, both were found fit to return to work and both were instructed to appear at a civil service hiring pool scheduled for September 25, 2000.

Civil Service Law sections 71 and 73 similarly provide that a person terminated from service under said statutes, who was subsequently deemed medically fit to return to work “shall be reinstated to his former position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field . . .”

The crux of petitioners claims in this proceeding is that they were not reinstated to their “former position[s]” as required by CSL sections 71 and 73. Specifically, Green claims that at the September 25, 2000 civil service hiring pool, she was returned to work, effective September 28, 2000, in the Civil Service position of per diem fraud Investigator Level I, rather than in her previously held position of Fraud Investigator Level II. Lewis claims that at the same Civil Service hiring pool, she was returned to work, effective September 28, 2000, in the Civil Service position of Fraud Investigator, rather than in her previously held position of Associate Fraud Investigator.

Respondents claim, inter alia, that there were no vacancies in the previously held positions at the time petitioners were returned to work; that Green was eventually promoted to her former

position (Fraud Investigator Level II) on February 20, 2001; and that it otherwise acted in accordance with the law.

For the reasons set forth below, the petition of Lewis is denied and the position of Green is granted in part.

As to Lewis, respondents have established that she was returned to work in the title for which she held permanent civil service status: Fraud Investigator Level II. Although Lewis held a provisional appointment to the title of Associate Fraud Investigator at the time she was terminated, respondents did not reinstate her to that position because there were no vacancies. Respondents have established that from the time of the September 2000 civil service hiring pool to date, there have been no vacancies in or appointments to the title Associate Fraud Investigator and that Lewis is on the current eligible list for this position.

Lewis' claim that there have been vacancies in the position of Associate Fraud Investigator has not been established. The only proof submitted to establish that there were vacancies in that title is an "Internal Recruitment Flyer", which is no evidence at all. This flyer merely states that "as vacancies arise, [HRA] will be filling" the position of Associate Fraud Investigator. Petitioner has submitted no other evidence that there were vacancies or appointments to the Associate Fraud Investigator position during the relevant period.

Accordingly, since there were no vacancies in Lewis' former provisional position, respondent acted in accordance with CSL section 71 when they restored Lewis to her permanent civil service title of Fraud Investigator Level II. Lewis' petition is therefore dismissed.

Regarding Green, who held the position of Fraud Investigator Level II, she was directed to appear at the September 25, 2000 Civil Service Hiring Pool. Green was not restored to her

former position at that time. However, at this hiring pool, 38 provisionals in the Fraud Investigator Level II were given permanent appointments to that position. Green claims that she should have been given one of those positions.

The sole reason put forth by respondents for not appointing Green to one of those positions is that the 38 positions were filled at the September 25, 2000 Civil Service hiring pool, while Green was reinstated on "October 16, 2000", after all the vacancies were filled (Lowenstein affidavit, para. 22-23, answer para. 49). This argument is without merit.

The 38 Fraud Investigator Level II appointments were made at the same September 25, 2000 hiring pool at which Green attended and at which she was also appointed. As a permanent Fraud Investigator Level II employee returning to work under CSL section 73, Green was entitled to one of those vacant positions. The fact that Green was given an "assignment date" of October 16, 2000 - the day she was to start work, is legally irrelevant. The 38 appointments were made at the September 25, 2000 Civil Service hiring pool, which Green attended, not the later date when each employee started work.

Respondents have represented to the Court that Green was eventually appointed to the Fraud Investigator Level II position as of February 20, 2000. Therefore, insofar as the petition seeks reinstatement, it is moot. Green's petition is granted only to the limited extent of directing respondents to pay Green the salary differential from the day she returned to work until the date of her permanent appointment to the Fraud Investigator Level II position.

This constitutes the decision and judgment of the Court.

DATED: JUN 25 2001



WILLIAM J. DAVIS J. S. C.