

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0705

ROBERT S. LAWRENCE

VERSUS

LOUISIANA DEPARTMENT OF STATE CIVIL SERVICE AND
LOUISIANA STATE CIVIL SERVICE COMMISSION

WTHW
TSW
Judgment Rendered: NOV 06 2015

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RSJ
On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. C628334, Sec. 27

The Honorable Todd Hernandez, Judge Presiding

* * * * *

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* * * * *

BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

DRAKE, J.

The plaintiff appeals a judgment of the district court granting the defendants' declinatory exception raising the objection of prescription and dismissing his suit, with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history of this case are thoroughly detailed in a prior decision of this court, *Lawrence v. State Civil Serv. Comm'n.*, 2014-0942 (La. App. 1 Cir. 12/23/14), 2014 WL 7278713 (unpublished), wherein we affirmed a ruling of the Louisiana Civil Service Commission (Commission):

Robert S. Lawrence is the State Examiner of Municipal Fire and Police Civil Service and he serves with permanent status. On February 18, 2013, Mr. Lawrence accepted the State Civil Service Commission's (SCS Commission) offer to provisionally appoint him to the position of Provisional State Examiner of Municipal Fire and Police Civil Service. Prior to his provisional appointment, Mr. Lawrence was serving as the Deputy State Examiner of Municipal Fire and Police Civil Service, with permanent status.

In Mr. Lawrence's written acceptance of his provisional appointment to the Provisional State Examiner position, he agreed to the SCS Commission's condition that his salary would be the same during the provisional appointment as he had been earning as the Deputy State Examiner. On June 5, 2013, Mr. Lawrence accepted a probationary appointment to the State Examiner position without an increase in pay. After Mr. Lawrence completed a six-month probationary period as the State Examiner, the SCS Commission granted him permanent status in that position effective December 5, 2013, along with a 10½ percent pay increase.

On December 20, 2013, the Department of State Civil Service received an appeal from Mr. Lawrence postmarked December 19, 2013. In his appeal, Mr. Lawrence contends that the SCS Commission violated Civil Service Rule (CSR) 6.11 by not increasing his pay upon his appointment as Provisional State Examiner. He further contends that his acceptance of the provisional appointment with the condition regarding his pay was an illegal "waiver" of his rights under the Civil Service Rules, and that his appeal is timely because he filed it within thirty calendar days of his learning of the alleged

rule violation. As relief, Mr. Lawrence requests that his pay be increased by 10½ percent. . .

Prior to February, 2013, Mr. Lawrence was the Deputy State Examiner. On February 1, 2013, Melinda Livingston retired as State Examiner. [Rainette Stevens] was appointed Provisional State Examiner on February 1, 2013, but had to resign shortly thereafter. On February 18, 2013, Mr. Lawrence was offered the position of Provisional State Examiner subject to four conditions, including accepting the appointment without an increase in pay. One of the conditions of the position was the following: "Your salary as Provisional State Examiner will be \$100,900.80/per annum (or \$48.51/hr[.])." Mr. Lawrence was earning the same amount as the Deputy State Examiner, prior to the provisional appointment. On May 7, 2013, after interviewing other candidates, Mr. Lawrence was selected as the new State Examiner. Mr. Lawrence claims that he was promised a 10½ percent pay increase after a six-month test period. The six-month working period ended on December 5, 2013, and Mr. Lawrence was sworn in on January 10, 2014. Through the workings of his office, Mr. Lawrence learned that it violated Civil Service rules to offer a higher position to an employee without increasing the compensation, as had been done with regard to his own promotion. Mr. Lawrence sought back-pay from February 18, 2013, due to his detail to special duty, claiming a violation of Louisiana Constitution Article X, Section 10.

On December 20, 2013, Mr. Lawrence filed a claim with the Commission claiming that he was improperly paid beginning with the date of his detail to special duty. The Referee noticed that the appeal was not filed within thirty days of the action complained of and permitted Mr. Lawrence to amend his appeal. Mr. Lawrence responded to the Referee and filed a supplement to the appeal. The Referee issued an opinion dismissing the appeal for not being filed within thirty days of February 18, 2013. The Referee determined that the claim for provisional pay from February 18, 2013, until June 5, 2013, when Mr. Lawrence began a probationary period, the claim for probationary pay from June 5, 2013, until he obtained permanent status on December 5, 2013, and his amended claim for disparate/discretionary treatment were all untimely.

Mr. Lawrence filed an Application for Review of the Referee's decision on March 14, 2014. The Commission affirmed the decision of the Referee on May 7, 2014.

Lawrence, 2014 WL 7278713, at *1-2. Mr. Lawrence appealed the May 7, 2014 ruling of the Commission dismissing his administrative appeal for untimeliness to this court, which affirmed the Commission's ruling. *Lawrence*, 2014 WL 7278713, at *5.

Prior to Mr. Lawrence's March 14, 2014 filing of his application for review of the Referee's decision with the Commission—the subject of the prior appeal—Mr. Lawrence filed a petition for relief and damages on February 20, 2014, in the Nineteenth Judicial District Court, naming the Louisiana Department of State Civil Service (Department) and the State Civil Service Commission (SCS Commission) as defendants. Mr. Lawrence alleged that his acceptance on February 18, 2013, of the SCS Commission's offer of the position of Provisional State Examiner contained an improper and illegal “waiver” of a pay increase. Mr. Lawrence claimed the portion of the acceptance that stated his salary as Provisional State Examiner would be “\$100,900.80/per annum (or \$48.51/hr.)” constituted a promotion without an increase in pay, as that salary was identical to the salary of the Deputy State Examiner, which Mr. Lawrence was earning prior to his provisional appointment. First, Mr. Lawrence contended that offering a higher position to an employee without increasing the compensation and mandating he sign the pay increase “waiver” were violations on the part of the SCS Commission of Civil Service Rules 6.3, 6.7, and 6.11. Second, Mr. Lawrence contended that the SCS Commission violated La. Const. arts. XIV, § 15.1 and X, § 10, as the SCS Commission cannot amend its rules without proper notice, public hearing, or approval of the Governor, nor does the SCS Commission have the authority to unilaterally set the pay of the Provisional State Examiner. Finally, Mr. Lawrence argued that the actions on behalf of the SCS Commission were discriminatory, as he was denied certain rights which were not denied to employees of the opposite sex (specifically referring to Ms. Rainette Stephens who received a pay increase

when she was appointed Provisional State Examiner on February 1, 2013, prior to Mr. Lawrence's appointment). Mr. Lawrence requested that his February 18, 2013 signing of the pay increase "waiver" be voided, he receive compensation for back-pay, his benefits be recalculated, and he receive attorney fees and costs.

Thereafter, the defendants filed a declinatory exception raising the objection of lack of subject matter jurisdiction and a peremptory exception raising the objection of prescription.¹ Mr. Lawrence opposed the exceptions. At the hearing on the exceptions, the defendants withdrew their peremptory exception raising the objection of prescription. Following the hearing, the district court rendered judgment on February 10, 2015, sustaining the defendants' declinatory exception raising the objection of lack of subject matter jurisdiction and dismissing Mr. Lawrence's suit, with prejudice. (R. 55). Mr. Lawrence now appeals.

LAW AND DISCUSSION

Standard of Review

At the outset, we note that although Mr. Lawrence urges fifteen assignments of error on appeal, this appeal is limited to the question of whether the district court lacks subject matter jurisdiction over the claims of Mr. Lawrence including, specifically, (i) Mr. Lawrence's claims for discrimination in pay based on gender, and (ii) Mr. Lawrence's claims that the SCS Commission lacked the authority to set his salary as Provisional State Examiner.

Subject matter jurisdiction is a threshold issue insofar as a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. La. C.C.P. art. 3. Jurisdiction is the legal power and authority of a court to hear and determine an action of the parties and to grant the relief to which they are entitled. La. C.C.P. art. 1. *Subject matter jurisdiction* is the legal

¹ We note that the defendants also filed a declinatory exception raising the objection of *lis pendens*, arguing that the instant suit was filed while the appeal of the Commission's May 7, 2014 ruling was pending with this court. *See Lawrence*, 2014 WL 7278713. Mr. Lawrence opposed the exception. Following a hearing, the district court denied the defendants' exception.

power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. C.C.P. art. 2. The issue of subject matter jurisdiction addresses the court's authority to adjudicate the cause before it. The issue may be raised at any time and at any stage of an action. *Whittenberg v. Whittenberg*, 97-1424 (La. App. 1 Cir. 4/8/98), 710 So. 2d 1157, 1158. Subject matter jurisdiction cannot be waived by the parties. La. C.C.P. art. 925; *IberiaBank v. Live Oak Circle Dev., L.L.C.*, 2012-1636 (La. App. 1 Cir. 5/13/13), 118 So. 3d 27, 30.

Where the lack of subject matter jurisdiction is not apparent on the face of the petition, the burden is on the defendant to offer evidence in support of the declinatory exception. La. C.C.P. art. 930; *Dickens v. Louisiana Correctional Institute for Women*, 2011-0176 (La. App. 1 Cir. 9/14/11), 77 So. 3d 70, 73. When evidence is introduced at trial on an objection of lack of subject matter jurisdiction, appellate review is governed by the rules applicable to review of facts. *See Bates v. Allstate Ins. Co.*, 2010-0234 (La. App. 4 Cir. 9/29/10), 48 So. 3d 1141, 1143. Thus, we will not disturb the trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *See Rosell v. ESCO*, 549 So. 2d 840, 844 (La. 1989).

Authority of the Commission: Discrimination in Pay Based on Gender

It is well settled that the constitution gives the Commission exclusive jurisdiction in all removal and disciplinary cases. La. Const. art. X, § 12(A). Further, the constitution specifically gives classified employees the right of appeal to the Commission in disciplinary actions and in cases alleging political, religious, sex, or race discrimination. La. Const. art. X, § 8. Civil Service Commission Rule 13.10(c) allows the Commission to hear appeals of those adversely affected by a violation of any provision in the Civil Service Article or any Civil Service Rule,

other than a rule in Chapter 10. This court has held that a state classified employee has the right to appeal such discrimination by virtue of Civil Service Rule 13.10, which was adopted pursuant to the Commission's rule-making powers. *Department of Health & Human Resources v. Payton*, 498 So. 2d 181, 188 (La. App. 1st Cir. 1986).

The constitution gives the Commission broad rulemaking powers for the administration and regulation of the classified service, and this power includes the power to adopt rules for regulating employment. La. Const. art. X, § 10(A)(1)(a). Civil Service Rule 13.10, which was adopted pursuant to the Commission's constitutional rule-making power, provides that an appeal may be made to the Commission by a state classified employee who has been removed, discriminated against because of political or religious beliefs, sex, or race, or has been adversely affected by the violation of any provision of the Civil Service Article or Civil Service Rule. *See Dept. of Labor, Office of Employment Security v. Leonards*, 498 So. 2d 178, 180 (La. App. 1st Cir. 1986). Therefore, the Commission, and not the district court, has subject matter jurisdiction to hear Mr. Lawrence's claim of discrimination in pay based on gender pursuant to Civil Service Rule 13.10(c).

Authority of the Commission: State Examiner Salary

Mr. Lawrence argues that at the time he accepted the offer of promotion to the position of Provisional State Examiner, Article XIV, § 15.1(9)(b) of the Louisiana State Constitution of 1921 (made statutory through Article X, § 18 of the Louisiana State Constitution of 1974 and La. R.S. 33:2479(B), (D), and (H)) vested the authority to set the pay of the State Examiner and Deputy State Examiner with the Governor of the State of Louisiana, not the SCS Commission. Mr. Lawrence further argues that pursuant to Article XIV, § 15.1(9)(c) of the Louisiana State Constitution of 1921, the SCS Commission is prohibited from including the positions of State Examiner and Deputy State Examiner in the Uniform Pay and

Classification Plan. Mr. Lawrence contends the SCS Commission illegally and improperly set the pay of the State Examiner in direct contravention of Article XIV, § 15.1 upon his illegal signing of the “waiver,” which set the pay of the State Examiner at the same amount as that of the Deputy State Examiner, in effect withholding from him the 10.5% pay increase that is customarily granted for an advancement of pay grade according to the Commission’s Uniform Pay Rules.

The defendants argue that the Provisional State Examiner of the Municipal Fire and Police Civil Service System falls within the state classified service, in accordance with Article XIV, § 15.1(9) of the Louisiana State Constitution of 1921 (made statutory through Article X, § 18 of the Louisiana State Constitution of 1974 and La. R.S. 33:2479(B), (D), and (H)). The defendants contend that Mr. Lawrence was classified as a state civil service employee at the time he was promoted to Provisional State Examiner, which would subject him, as well as any decisions regarding his pay, to the authority of the SCS Commission.

Mr. Lawrence contends that although his position of State Examiner is classified as state service, prior to its amendment by 2013 La. Acts 313 § 1, Article XIV, § 15.1(9)(c) provided that the State and Deputy State Examiners were “bound under and amenable to the Classified Service of the State as established and existing, except no pay plan thereunder shall be applicable to the said state examiner or deputy state examiner.” Furthermore, Article XIV, § 15.1(9)(b) provided, prior to its amendment by Act 313, that the State Examiner would be “paid a salary in the amount fixed by the Governor.” 2013 La. Acts 313 § 1, which amended Article XIV, § 15.1(9) of the Louisiana State Constitution of 1921, became effective on August 1, 2013. Mr. Lawrence accepted his offer of promotion to Provisional State Examiner on February 18, 2013, prior to the effective date of Act 313; thus, he argues that the SCS Commission illegally and improperly set his pay as State Examiner upon his illegal signing of the “waiver,”

and that he is not subject to the authority of the Commission in this matter regarding his salary as State Examiner.

The constitution gives the Commission broad rule-making powers for the administration and regulation of the classified service, and this power includes the power to adopt rules for regulating employment. La. Const. art. X, § 10(A)(1)(a). Furthermore, it is well established in our jurisprudence that the Commission has exclusive jurisdiction over classified civil service employer-employee disputes that are employment related. *See* La. Const. art. X, § 10(A)(1)(a); *see also In re Brisset*, 436 So. 2d 654, 658 (La. App. 1st Cir.), *writ denied*, 441 So. 2d 749 (La. 1983); *Strickland v. State, Through Office of the Governor*, 525 So. 2d 740, 743 (La. App. 1st Cir.), *writ granted*, 526 So. 2d 1122 (La. 1988); *Leger v. Louisiana State Univ.*, 601 So. 2d 20, 21 (La. App. 1st Cir. 1992); *Akins v. Hous. Auth. of New Orleans*, 2003-1086 (La. App. 4 Cir. 9/10/03), 856 So. 2d 1220, 1221, *writ denied*, 2003-2781 (La. 12/19/03), 861 So. 2d 574; *State Civil Serv. Comm'n. v. Dept. of Pub. Safety Dir.*, 2003-1702 (La. 4/14/04), 873 So. 2d 636, 644; *Waller v. State, Dept. of Health & Hospitals*, 2011-643 (La. App. 3 Cir. 11/9/11), 79 So. 3d 1085, 1089, *writ denied*, 2011-2692 (La. 2/10/12), 80 So. 3d 488.

It is apparent from the petition that the relief sought by Mr. Lawrence is an accounting for past-due wages he alleges are owed to him as a result of the SCS Commission's action in unilaterally setting a salary without proper notice, public hearing, or approval of the Governor, and in offering him a higher position without increasing his compensation, which he alleges are violations on the part of the SCS Commission of Civil Service Rules 6.3, 6.7, and 6.11. The claims asserted by Mr. Lawrence, whose positions as provisional and permanent State Examiner have at *all times* been classified within the state civil service, are related to his employment. Thus, this is an employment-related matter involving the setting and calculation of wages, which is sufficient to invoke the Commission's exclusive

jurisdiction. The issue of whether the SCS Commission or the Governor should have set Mr. Lawrence's salary, and whether Mr. Lawrence should have received a higher salary upon promotion, are matters confined exclusively to the jurisdiction of the Commission, pursuant to La. Const. art. X, § 10(A)(1). Therefore, we find no error in the district court's ruling.

DECREE

For the reasons stated herein, we affirm the February 10, 2015 judgment of the district court granting the defendants' declinatory exception raising the objection of lack of subject matter jurisdiction and dismissing Mr. Lawrence's suit, with prejudice. All costs of this appeal are assessed to the plaintiff/appellant, Robert S. Lawrence.

AFFIRMED.