Matter of Alleyne v Department of Educ. of the City of N.Y.
2018 NY Slip Op 30670(U)
April 13, 2018
Supreme Court, New York County
Docket Number: 155511/2017
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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In the Matter of the Application of
CRYSTAL ALLEYNE,

Petitioner,

For a Judgment Pursuant to Article 78 of the CPLR,

- against-

THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK, AND THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF NEW YORK,

Respondents.

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Index No. 155511/2017

Mot. Seq. 001

DECISION, ORDER & JUDGMENT

ARLENE P. BLUTH, JSC

The petition is denied and this proceeding is dismissed.

Background

This petition arises out of petitioner's former employment as a probationary teacher for respondents. Petitioner began working for respondents as a paraprofessional in 2014-2015 and then worked as a full-time probationary teacher in 2015-2016. As an employee for respondents, petitioner was required to follow the mandates of Chancellor's Regulation C-105. Chancellor's Regulation C-105 9 (a) states: "Any person employed by or in the Department of Education . . . who has been arrested and charged with a felony, misdemeanor or violation must immediately notify the OPI [Office of Personnel Investigation] and his/her . . . supervisor in writing . . ." (Souliopoulos affirmation in support, exh "1" at 6, ¶ 9).

On April 17, 2016, petitioner was arrested in connection with a domestic dispute and

charged with felony assault. The next day, the New York City Police Department notified respondents of the incident. However petitioner, in violation of Chancellor's Regulation C-105, did not. Petitioner claims that she attempted to notify her supervisor, but she was unavailable. Petitioner further asserts that after she made that attempt, she had to attend a school trip and did not get a chance to provide notice until April 21, 2016, when she returned.

In addition to not notifying her supervisor immediately, petitioner also received an unsatisfactory performance rating for the 2015-2016 school year. On June 27, 2016, petitioner was fired. In response to her termination, petitioner filed a grievance. While that grievance was pending, on October 28, 2016, all charges against petitioner in connection with the April 17 incident were dismissed.

On January 25, 2017, an administrative hearing on her grievance regarding the unsatisfactory rating was held. At that time, petitioner also notified respondents that the charges were dropped. On February 22, 2017, petitioner's discontinuance was upheld (*see* petition, exh "A"). On June 16, 2017, petitioner commenced this proceeding.

Petitioner argues that respondents' decision to discontinue her employment was arbitrary and capricious, in bad faith, and in violation of New York State Corrections Law, New York State and New York City Human Rights Law, and New York State Executive Law because respondents' basis for the discontinuance was the criminal charges that were later dismissed. Petitioner contends that respondents' reliance on unproven allegations cannot support a finding that respondents' decision was rational. Petitioner asserts that respondents' improperly issued her an unsatisfactory rating and terminated her because of discriminatory animus against petitioner that stemmed from her arrest. Petitioner seeks her record be expunged, that she be

declared eligible to work for respondents and be reinstated to her position. She asks for loss of earnings, compensatory damages and attorney fees.

The Cross-Motion to Dismiss

In support of the cross-motion to dismiss, respondents claim that the proceeding is time-barred because it was not commenced within the four-month statute of limitations period that began to run on June 27, 2016, the effective date of petitioner's discontinuance. Respondents assert that because this proceeding was commenced on June 16, 2017, almost eight months after the limitations period expired, it is untimely. Respondents also insist that even if the petition was timely, they had a rational basis to fire petitioner, a probationary employee, who could have been terminated for any reason as long as it was not in bad faith. Respondents maintain that petitioner was properly terminated for her violation of its notice requirement and for her substandard classroom performance. Respondents stress that petitioner was not fired for her arrest, but for not speedily reporting it to them and thus it is irrelevant that she was fired after respondents learned that her charges were dismissed.

Discussion

A court will dismiss a petition if a petitioner fails to commence an Article 78 proceeding "within four months after the determination to be reviewed becomes final and binding upon the petitioner" (*Walton v New York State Dept. of Correctional Servs.*, 8 NY3d 186, 195, 831 NYS2d 749 [2007] [citation and internal quotations omitted]). "[A] petition to challenge the termination of probationary employment must be brought within four months of the effective date of termination, during which time the termination is deemed to become final and binding, and a

petitioner's pursuit of administrative remedies does not toll the four-month statute of limitations" (*Nash v Bd. of Educ. of City Sch. Dist. of City of New York*, 82 AD3d 470, 470, 918 NYS2d 94, 96 [1st Dept 2011] [citations omitted]).

Respondents claim that petitioner was fired for both her failure to promptly notify respondents of her arrest and for her poor rating. To the extent that petitioner challenges her termination for her failure to report her charges to respondent fast enough, this proceeding is time-barred. The effective date of petitioner's discontinuance was June 27, 2016. Contrary to petitioner's assertion, there is no ambiguity surrounding respondents' decision to terminate her. Petitioner does not contest that she was fired on that date. Hence, petitioner had until October to file her petition, but filed it on June 16, 2017, about eight months too late. Petitioner's administrative appeal for reconsideration of her termination does not extend her time.

Petitioner argues strenuously that the statute of limitations should be extended because she could not challenge her firing due to her arrest until the charges against her were dismissed. But petitioner misses the point. She was not fired for her arrest; she was fired for not immediately reporting it to respondents. She cannot unring that bell. Although she could have challenged the penalty for not reporting it by filing an Article 78 – alleging that firing her under these circumstances shocks the conscience - she would have had to do so within four months of her termination, which she did not. Thus, it is too late for plaintiff to challenge her termination for violation of Chancellor's Regulation C-105, the failure to immediately report her arrest. The petition is time-barred.

There were two reasons for petitioner's termination - failing to immediately report her arrest and an unsatisfactory evaluation. Given that the termination for failing to report was

unchallenged, an analysis of her unsatisfactory rating is purely academic. Even if petitioner was a stellar teacher with a wonderful rating, she would still be terminated for failing to immediately report the arrest and not challenging it within four months.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied, this proceeding is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision, Order and Judgment of the Court.

Dated: April 13, 2018
New York, New York

ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH
J.S.C.