

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Charles E. Campbell, II, :
Appellant :
v. :
Southern Tioga School : No. 587 C.D. 2008
District : Submitted: September 19, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: November 25, 2008

Charles E. Campbell, II (Campbell) appeals from an order of the Court of Common Pleas of Tioga County (trial court) that denied Campbell post-trial relief.

On March 2, 2004, Campbell filed a complaint in mandamus and alleged:

3. [Campbell] is duly certified by the Pennsylvania Department of Education in secondary mathematics.
4. A secondary mathematics teacher, Julie Jayne, assigned to the North Penn High School, resigned effective August 20, 2002.
5. [Campbell] applied for the position for which he remains duly and properly certified, but did not receive the job.
6. [Campbell] has learned that the Defendant [Southern Tioga School District] applied for and secured an emergency certificate to employ a long-term substitute

teacher for the first semester of the 2002-2003 school year teaching secondary mathematics.

7. The Pennsylvania Code provides for the issuance of emergency teaching certificate only as follows:

The Department may issue an emergency, Long-Term or Day-to-Day Substitute Permit for service in the public schools, at the request of the employing public school entity, to an applicant who is a graduate of a 4-year college or university to fill a vacant position or serve as a long-term or day-today substitute teacher, when a fully qualified and properly certified applicant is not available. The permit is issued on the basis and terms and conditions agreed upon between the requesting public school entity and the Department. Each July, the Department will report to the Board the number and nature of the emergency, Long-Term and Day-to-Day Substitute Permits issued during that year.

8. The Defendant [School District] requested from the Department of Education an emergency certificate in violation of the above provision of the Pennsylvania Code inasmuch as there was a fully qualified and properly certified applicant to teach the secondary math position, i.e., [Campbell] herein.

9. [Campbell] promptly brought his complaint to the attention of the board of school directors and the Commonwealth of Pennsylvania, Department of Education, but to no avail.

10. As a result of the unlawful failure of the Defendant School District to employ [Campbell], [Campbell] will lose a secondary education grant benefitting him in excess of \$20,000.

11. The mandatory act which Defendant [School District] is obligated to perform is the immediate employment of [Campbell], with back salary.

12. [Campbell] has no adequate remedy at law.

Complaint, March 2, 2004, Paragraphs 3-12 at 1-3; Reproduced Record (R.R.) at 6a-8a.

The Southern Tioga School District (School District) answered and denied that “there was a fully qualified applicant” and that the “School District [was] obligated to employ [Campbell] with back salary.” Answer to Complaint, April 5, 2004, Paragraphs 8 and 11 at 2; R.R. at 11a.

At a non-jury trial, John Franklin Meehan (Meehan), Director of the Bureau of Teacher Preparation and Certification of the Department of Education, explained that the terms “certified” and “qualified” have different and distinct meanings. Hearing Transcript (H.T.), July 23, 2007, at 17; at 9; R.R. at 23a. “One, the wording of the regulation itself . . . in practical terms a certification is good for 99 years so a teacher could be certified and in theory 99 years later still be certified to teach in the State of Pennsylvania, but not qualified to do so.” H.T. at 9; R.R. at 23a. Meehan stated that “[f]ully qualified to the Department of Education means that the local superintendent in effect considers that person qualified to teach in the classroom . . . [i]n other words there was no set, you know, three courses of this and four courses of that.” H.T. at 12-13; R.R. at 26a-27a. Meehan continued that even hypothetically if one applicant “was properly certified in secondary mathematics but that [the school district] desired to employ someone with no mathematic certification, no mathematics teaching experience . . . the Department would issue an emergency certificate to employ that person . . . [i]f the superintendent had requested it.” H.T. at 13; R.R. at 27a.

Campbell testified that “I was trying to find out how to file a complaint about an improper issuance of an emergency certificate to Southern Tioga School District.” H.T. at 17; R.R. at 31a. Campbell contacted Meehan and “[h]e started corresponding to me via e-mail . . . [a]nd then I also talked to him on the phone I believe two times.” H.T. at 18; R.R. at 32a. Campbell stated that “[h]e told me on the phone that he was unable to investigate my complaint because emergency certificates are issued by social security number to an individual and that would violate that individual’s privacy for him to investigate my complaint.” H.T. at 19; R.R. at 33a. Campbell stated that after he explained his situation Meehan responded “that . . . Southern Tioga’s actions would be a violation of the Staffing Guidelines.” H.T. at 19; R.R. at 33a. In any event, Campbell stated that Meehan could not investigate because of the confidentiality issue. H.T. at 19; R.R. at 33a.

Also, introduced at the nonjury trial were the depositions of Albert Lindner (Lindner), principal of Blossburg Elementary School and North Penn Junior/Senior High School, Che Regina (Regina), a physics and math teacher, Jeffrey A. Rush (Rush), former member of the Board of the School District, and Joseph Kalata (Kalata), Superintendent of the School District.

Linder stated that an opening occurred in the secondary school when Julie Jayne, a mathematics teacher, resigned. Deposition of Albert Lindner (Lindner Deposition), September 16, 2005, at 5; R.R. at 135a. Linder explained that the hiring process involved a screening of all applications and then “we choose those that we feel are the strongest candidates and we set up an interview

schedule.” Lindner Deposition at 7; R.R. at 137a. After the interview process, Lindner recommended those applicants that would proceed to “[t]he second level.” Lindner Deposition at 8-9; R.R. at 138a-39a. Lindner did not recommend Campbell to the second level because “I didn’t feel that he was our strongest candidate, and I don’t think it’s good practice to take people to the second level if they’re not someone that I’m seriously interested in hiring.” Lindner Deposition at 9; R.R. at 139a. Lindner acknowledged that although Campbell was certified he was not qualified to teach because of two reasons. “The first one would have been in the actual teaching lesson . . . the interaction with the students was not a real positive participative lesson.”¹ Lindner Deposition at 10; R.R. at 140a. The second was “the actual interview itself, Mr. Campbell indicated to us that he had been interviewed a number of times and had not received a position to this point, and I had some concern about why that might have been . . . the major thing was the interaction with the students.” Lindner Deposition at 11; R.R. at 141a. Because it was determined that none of the applicants were qualified for the position, “Mr. [Les] Albor [a certified science teacher] was hired . . . on a temporary certificate . . . [because] [h]e had done an outstanding job for us in the

¹ Jonathan P. Riba (Riba), attorney for the School District, to Lindner:

Q: Did you discuss the class taught with those students after the –

A: Always. That’s a part of my procedure.

Q: And do you recall what the students said about Mr. Campbell’s teaching?

A: The comment was made by several of the students was that we would have concerns about his ability to be able to manage a class in terms of discipline and control

Lindner Deposition at 13; R.R. at 143a.

temporary position, so we then hired him with a temporary certificate to teach that math course.” Lindner Deposition at 17; R.R. 147a.

Regina testified that after Les Albor taught “the Julie Jayne position on an emergency certificate for the first semester,” “I taught it [Math] for the second semester.” Deposition of Che Regina (Regina Deposition), June 28, 2005, at 6; R.R. at 111a. Regina stated that he was certified in Physics but that he had finished all his math classes for certification and that “I needed to take the exam still in September [2002].” Regina Deposition at 4; R.R. at 109a. There was an understanding between him and the North Penn High School that he would obtain his math certification. Regina Deposition at 4; R.R. at 109a. Regina taught “[c]ollege algebra, first period . . . [s]econd period was eighth grade math . . . [t]hird period was trigonometry . . . [and] [f]ourth period was probability and statistics.” Regina Deposition at 5; R.R. at 110a.

Rush stated that at a meeting “I remember . . . that his [Campbell’s] complaint was . . . that he had applied for the job, being both certified and qualified, and we did not hire him.” Deposition of Jeffrey A. Rush (Rush Deposition), June 28, 2005, at 6; R.R. at 100a. The School District informed Rush that “they believed he [sic] [Campbell] was not qualified” and “that almost a hundred percent of the time, the Board takes the recommendation of the Administration in hiring practices, because we respect that those are our building principals and we employ them to bring us the best recommendation of both certified and qualified.” Rush Deposition at 8; R.R. at 102a.

Finally, Kalata stated that he contacted Meehan and told him about Campbell's complaint. Deposition of Joseph Kalata (Kalata Deposition), June 28, 2005, at 8; R.R. at 126a. Meehan was aware of the situation and advised us that "the actual hiring of a qualified [applicant] is a local decision" and I sent "a letter to Mr. Campbell saying that we had consulted both with PDE and our lawyers, and we believe that our hiring practices . . . [were] legitimate." Kalata Deposition at 9; R.R. at 127a. On October 12, 2007, the trial court dismissed Campbell's mandamus action in a eight page opinion.

Campbell sought post-trial relief and asserted that "[t]he result of this case is that, essentially, the certification mandated by the School Code and regulations promulgated hereunder are rendered a nullity inasmuch as the School District can completely ignore properly certified applicants and choose to hire someone with no certification and no teaching experience whatsoever." Motion for Post-Trial Relief, Paragraph 5 at 2; R.R. at 289a.

On March 18, 2008, the trial court denied post-trial relief on the basis of its October 12, 2007, opinion.

Before this Court,² Campbell asks:

Did the trial [court] err in denying Appellant's request for a writ of mandamus^[3] directing Appellee School District

² This Court's review is limited to determining whether the trial court abused its discretion or committed an error of law. Penn's Grant Associates v. Northampton County Board of Assessments and Appeals, 733 A.2d 23 (Pa. Cmwlth. 1999).

to employ him as a Mathematics teacher, when he was fully certified to teach Mathematics in the public schools of the Commonwealth of Pennsylvania, and the person employed was not certified as a Mathematics teacher; had no experience teaching Mathematics; and had no interest, inclination or desire to become certified in teaching Mathematics in the public schools of the Commonwealth?^[4]

Brief for Appellant, Statement of Question Involved at 4.

This issue was raised and argued before the trial court and ably disposed of in the opinion of the Honorable Robert E. Dalton, President Judge of Tioga County. Therefore, this Court shall affirm on the basis of that opinion. Charles E. Campbell, II v. Southern Tioga School District, (No. 160 CV 2004) filed October 12, 2007.

BERNARD L. MCGINLEY, Judge

(continued...)

³ In Jackson v. Vaughn, 565 Pa. 601, 604-05, 777 A.2d 436, 438 (2001), our Pennsylvania Supreme Court enunciated the criteria necessary for the issuance of a writ of mandamus: “[m]andamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate remedy.”

⁴ Essentially, Campbell argues that pursuant to 22 Pa. Code § 49.31 if an applicant is certified then he is also qualified to teach in the area of his expertise.

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ORDER

AND NOW, this 25th day of November, 2008, the order of the Court of Common Pleas of Tioga County in the above-captioned case is affirmed.

BERNARD L. MCGINLEY, Judge