Unreported Disposition
2013 WL 4080745
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Supreme Court, Dutchess County, New York.

Application of Carleton PETERSON, Petitioner,
For a Judgment Pursuant Article 78 of the CPLR,
v.
CITY OF POUGHKEEPSIE, Respondent.

No. 3428/13. | Aug. 13, 2013.

Attorneys and Law Firms

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Upon the foregoing papers the petition is decided as follows:

Opinion

JAMES D. PAGONES, J.

***1** Petitioner seeks a judgment providing the following relief: (a) annulling the petitioner's termination of employment with the City of Poughkeepsie as being arbitrary and capricious; (b) granting the petitioner all back pay and benefits from the date of his allegedly improper discharge of September 9, 2010; and (c) directing that respondent maintain the petitioner on the payroll unless and until there is a redetermination of the disciplinary charge previously filed against him.

The following papers were considered:

Notice of Petition–Petition–Verification–Affidavit–1–9

Exhibits A–E

By way of background, petitioner was employed by the respondent as a Street Supervisor. On or about February 4, 2010, the petitioner was served with an amended notice and statement of disciplinary charges and thereafter suspended without pay for thirty (30) days. Petitioner thereafter requested a hearing to determine the validity of the charges contained within the aforementioned notice. Following a hearing, Hearing Officer Edmund B. Caplicki issued his report and recommendation regarding the amended notice and statement of disciplinary charges filed against the petitioner. Mr. Caplicki's report and recommendation found petitioner guilty of the following charges: (1) Charge 1, Specification 1, violation of the alcohol/drug policy; (2) Charge 2, Specification 2, falsely reporting time; Charge 3, Specification 3, dereliction of duties; Charge 4, Specification 4, misuse of a city owned vehicle and dereliction of duties; Charge 5, Specification 5, misconduct and dereliction of duties. Thereafter, on or about September 9, 2010, Ronald J. Knapp, City of Poughkeepsie Police Chief who had been appointed Acting City Administrator, adopted the recommendation of the hearing officer which called for the termination of the petitioner. Petitioner then brought an Article 78 proceeding challenging this ruling. By order, dated March 31, 2011, the Honorable Charles D. Wood, J.S.C., dismissed the petition. This order was then appealed to the Appellate Division, Second Department.

The Appellate Division held that "we may not disturb Knapp's determination that the petitioner was guilty of charges one, two, and three," however, "those portions of the determination that found the petitioner guilty of charges four and five must be annulled, and those charges dismissed." (*Matter of Peterson v. City of Poughkeepsie*, 99 AD3d 714 [2nd Dept 2012]). The court further held that "[s]ince the City imposed a penalty of termination of the petitioner's employment upon a finding that the petitioner was guilty of charges one, two, three, four, and five, and we are dismissing charges four and five, we vacate the penalty and remit the matter to the City to give it the opportunity to consider the appropriate penalty to be imposed upon the petitioner in connection with charges one, two, and three, and the imposition of that penalty thereafter." Acting City Administrator Knapp then issued an amended decision and order dated February 14, 2013, terminating petitioner's employment effective September 9, 2010 based upon the findings as to disciplinary charges one, two and three. Petitioner then commenced this Article 78 proceeding on June 6, 2013, challenging the decision of February 14, 2013.

***2** It is axiomatic that in an Article 78 proceeding, the Court's function is to determine whether the action of an administrative agency had a rational basis or was arbitrary and capricious (*see* CPLR § 7803; *Pell v. Board of Educ. Of Union School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222 [1974]). Arbitrary action is action taken without sound basis in reason and is generally taken without regard to the facts (*Pell v. Board of Educ. Of Union School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222 [1974]). A rational basis exists where the determination is supported by proof sufficient to satisfy a reasonable person, of all the facts necessary to be proved in order to authorize the determination (*see Matter of Ador Realty v. DHCR*, 25 AD3d 128 [2nd Dept 2005]).

However a court cannot operate merely as a rubber stamp of the administrative determination if the measure of punishment or discipline imposed is so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness (*see Pell v. Board of Educ. Of Union School District No. 1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222 [1974]). Thus, where the administrative sanction shocks one's sense of fairness and, thereby, as a matter of law, constitutes an abuse of discretion, this Court is authorized to set aside such a determination by the administrative agency (*see McDougall v. Scoppetta*, 76 AD3d 338 [2nd Dept 2010], *lv granted* 16 NY3d 704 [2011], *appeal withdrawn* 17 NY3d 902 [2011]).

A review of the hearing transcript indicates that petitioner admitted to consuming alcohol during his work hours. Additionally, the hearing transcript further supports the administrative finding that petitioner failed to perform work during work hours and falsely reported his work hours, in that he exceeded his thirty (30) minute lunch break without so indicating upon his time card. Moreover, the Appellate Division has already found "that substantial evidence in the record supports the determination of Ronald J. Knapp, as Acting City Administrator, that the petitioner was guilty of charges one, two, and three, arising out of the petitioner's conduct on December 24, 2009" (*Matter of Peterson v. City of Poughkeepsie*, 99 AD3d 714 [2nd Dept 2012]). Accordingly, there exists no issue of fact as to whether or not petitioner was free from guilt as to charges one, two and three as lodged against him. This Court must now look specifically to the offense(s) and determine whether or not the penalty, termination, shocks the judicial conscience (*see Kelly v. Safir*, 96 N.Y.2d 32 [2001], *rearg. denied* 96 N.Y.2d 854 [2001]; *Matter of Will v. Frontier Cent. School Dists. Bd. of Educ.*, 97 N.Y.2d 690 [2002]). The facts of this matter and the charges as sustained by the Appellate Division, the administrative agency and this Court, while serious, do not fit the penalty of termination. On Thursday December 24, 2009, while working his shift from 7:30 a.m. until 4:00 p.m., petitioner was observed at an establishment known as "Andy's Place" consuming a beer and a shot of liquor from approximately 1:40 p.m. until 2:40 p.m., at which point petitioner returned to work. This one hour time frame has now cost petitioner his job and his benefits associated with the position. While this Court recognizes that the petitioner committed a serious infraction, the penalty of termination of his employment is so disproportionate to the offense committed as be shocking to one's sense of fairness (*see Matter of Sequist v. County of Putnam*, 40 AD3d 1003 [2nd Dept 2007]). There is simply no evidence before this Court that the petitioner during his nineteen (19) years of employment with respondent had presented a disciplinary problem or that the incident was anything but isolated (*see McDougall v. Scoppetta*, 76 AD3d 338 [2nd Dept 2010], *lv granted* 16 NY3d 704 [2011], *appeal withdrawn* 17 NY3d 902 [2011]). Accordingly, this matter is remitted to the respondent for the imposition of a lesser penalty.

***3** The remainder of the petition must be held in abeyance pending submissions by petitioner and respondent of a computation of the value of his full back pay and benefits less any compensation derived from other employment or any unemployment benefits received from September 9, 2010 until now (*see generally Matter of Trahan v. Jefferson County Dept. of Social Servs.*, 2 AD3d 1309 [4th Dept 2003]).

Based upon the foregoing, the petition is granted to the extent that this matter is remitted back for a new disciplinary hearing regarding the imposition of a lesser penalty. The remainder of the petition is held in abeyance pending submission of calculations of back pay and benefits due petitioner for this Courts consideration on or before September 9, 2013.

The foregoing constitutes the decision and order of this Court.

Parallel Citations

2013 N.Y. Slip Op. 51322(U)

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