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In The

Commonwealth Court of Pennsylvania

No. 27 T.D. 1973

BARBARA GOETZ,

Appellant,

vs.

NORRISTOWN AREA SCHOOL DISTRICT,

Appellee.

Appeal from Order of Montgomery County Court of Common Pleas in No. 71-12948 Dated November 24, 1972

BRIEF FOR APPELLANT

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STATEMENT OF JURISDICTION

Appellate jurisdiction of the subject matter is lodged in the Commonwealth Court of Pennsylvania by virtue of the Appellate Court Jurisdiction Act of 1970, Act of 1970, July 31, P.L. 673, No. 223, Article IV, Section 402, as amended, 17 P.S. 211.402(4).

STATEMENT OF QUESTION INVOLVED

Whether the Court erred in law or committed an abuse of discretion in denying the plaintiff's consideration for damages following the determination of her wrongful dismissal?

Not answered by the Court below.

HISTORY OF THE CASE

This is an action in mandamus being treated principally the same as an action in assumpsit in which appellant seeks compensation for the period of her dismissal as a professional employee (teacher) to the time of her ordered reinstatement.

Pleadings in this matter were comprised of a complaint and answer thereto, and an agreed statement of facts, the latter of which was ordered pursuant to the consent of the parties by a pre-trial order dated July 12, 1972, scheduling the matter for long argument.

The matter was argued before the Montgomery County Court en banc on or about November 10, 1972, the Court being comprised of the Honorable David E. Groshens, President Judge, the Honorable Frederick B. Smillie, Judge, and the Honorable A. Benjamin Scirica, Judge. On November 24, 1972, the Court through Judge Scirica issued an order declaring petition for mandamus dismissed. It is this order that is being appealed.

Factually, appellant while employed as a professional employee (teacher) became pregnant and refused to abide by the school district regulation requiring her to submit her resignation. The district policy proscribed maternity leave. The district proferred charges against appellant asserting her failure to comply with the board's policy requiring resignation pursuant to Section 1122 of the Pennsylvania Public School Code. Appellant was dismissed on or about June 22, 1970, following hearings.

Appellant appealed to the Secretary of Education, who reversed the board's decision on March 22, 1971, declaring the board's policy invalid, the dismissal unwarranted, and ordering the reinstatement forthwith of appellant.

ARGUMENT

I.

The order and opinion of the Court of Common Pleas of Montgomery County denying compensation to the appellant after her wrongful dismissal constitutes an error of law and abuse of discretion.

The plaintiff, Barbara Goetz, was unemployed for the period of April 24, 1970 until May 14, 1971 due to the discharge action of the Norristown Area School District. The Secretary of Education, in reviewing the matter on appeal, determined that the discharge of plaintiff was "invalid and . . . unwarranted," and ordered the school district to reinstate her forthwith. She was so reinstated. At that juncture, the school district had the right to appeal the Secretary's decision to the appropriate forum pursuant to Section 1132 of the Pennsylvania Public School Code (24 P.S. 1132), but did not do so. Prior to passage of the Appellate Court Jurisdiction Act of 1970, July 31, P.L. — No. 223 (17 P.S. 211 509(a)), the appeal forum was the Court of Common Pleas. Any qualm or legal challenge to the Secretary's decision of an invalid and unwarranted nature was properly subject to further litigation. Having chosen not to so appeal, it is contended that the appellant is entitled to every consequence of the illegal dismissal without suffering the throes of collateral attack on its validity.

The order and decision of the Montgomery County Court reflects an offering of an "opinion" that the regulation considered by the Secretary of Education should not have been applied retroactively in its decision of May 22, 1971. To have arrived at and employed such a

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finding in the decision rendered, we submit is error. *Cheryl Cerra v. East Stroudsberg Area School District*, 450 Pa. 207, 299 A.2d 277 (1973). The Court's decision likewise concluded that a leave request submitted by appellant in an effort to avoid the mandated resignation that she ultimately was required to challenge as illegal established that she was no longer able to work; that she was not ready, willing or able to work because pregnant. There are absolutely no facts in the record to support such findings and conclusions. The findings were precisely to the contrary in the district proceedings, supported by competent medical testimony. Even were the findings proper, as noted in *Cerra*, supra, recently by our Supreme Court:

> "Even assuming during the month of May 1970, Mrs. Cerra 'lacked . . . the physical fitness . . . to perform the required duties incident to her employement of teaching', this in itself is not 'incompetency' under the Code."

Such a finding would thus not justify her dismissal.

The opinion also supposes to relate to the issue of appellant's right to compensation from the period of May 15, 1970, and asserts that there are no facts evidencing when she was able to return or if she ever made a demand to return. Such observations ignore the Secretary's finding that the appellant was wrongfully dismissed; that is to say, that the appellant was removed from employment. Her circumstance was that she demanded to continue in employment to the extent that dismissal was necessary to remove her. Her demand of employment was continuous. A demand to return would presume a consent absence.

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Appellant was barred from returning. The legal effect of the Court's opinion is to deprive the appellant of the benefit of the Pennsylvania Public School Code provision prohibiting any abatement of salary or compensation in all cases where the final decision in dismissal proceedings is in favor of the professional employee. See 24 P.S. 1130. *Kaplan v. Philadelphia School District*, 178 Pa. Superior Ct. 88, 133 A.2d 164 (1955) and 388 Pa. 213, 130 A.2d 672 (1957); *Johnson v. United States School District Joint School Board*, 201 Pa. Superior Ct. 375, 191 A.2d 897 (1963).

The opinion further attempts to decide the issue of compensation on an interpretation of the human relation's guidelines which it asserts only provides for a maternity leave without pay. It is submitted that the extent of appellant's rights can certainly not be adjusted on the basis of the limitations within a right to which one has been denied. Appellant was denied a maternity leave. It is not sufficent to assert that were she to have been granted a leave, she would not have received compensation. The proper issue for determination is the search for that remedy which will render the appellant whole as a result of being improperly severed from her employment.

The opinion also asserts that it questions whether the appellant has any clear legal right to pursue compensation under the circumstance of asking the Court to enforce a ruling retroactively. Such was not being asked of the Court. What was being asked was the Court's determination as to appellant's rights after a finding of invalid and unwarranted dismissal. The propriety or legality of the Secretary's decision was beyond the

jurisdiction of the Court. The matter of its propriety would not even fall within the Court's jurisdiction if it had been directed to them upon appeal. That too would have been erroneous. Appellate Court Jurisdiction Act of 1970, July 31, P.L.___ No. 223 (17 P.S. 211, 509(a)).

Finally, the Court denies to appellant any consideration because she "was in effect on maternity leave." One almost does not know how to respond to such a finding without inferring some disrespect. None is intended. The appellant has been diligent in pursuing the orderly process of the law. She has submitted to the board hearings and the appeal to the Secretary of Education, and now finds that she is being told by the Court that all is well; that she "was in effect on maternity leave" through it all. Such a finding and conclusion we submit is more than novel, and we ask its correction.

The significance of the opinion of the Secretary of Education lies in the fact that the Secretary found that the school district's regulation requiring the resignation of teachers in the fifth (5th) month of pregnancy was invalid. Inherently and expressly, they asserted that a teacher is only bound to comply with the reasonable rules and regulations adopted by a school board. The Secretary obviously reached the legal conclusion that the Amendment of the Human Relations Act., 43 P.S. 951, on July 9, 1969, P.L. 133, Section 1, precluding discrimination based on "sex" governed and controlled so as to render the board's regulation invalid. The Act was amended some nine (9) months before the instant issue surfaced, which is when the school district was obliged to

correct its policies in accord therewith. Subsequently the Human Relations Commission promulgated regulations to better define the consequence of the legislative amendment. Our Pennsylvania Supreme Court has found precisely that in a case dealing with an almost identical regulation requiring resignation because of pregnancy concluded on that record that the true reason for the dismissal was the teacher's refusal to resign as required by the board's regulation. The Court then proceeded to announce that they had no hesitancy in reaching the conclusion that the board's action was violative of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. 955(a), and was therefore illegal.

Not only was the board regulation identical or almost identical to that in the instant case, but as well, the Monroe County Court in the opinion written by Judge Williams, *Cheryl Cerra v. East Stroudsberg Area School District*, 27 Monroe Legal Reporter 262 (1971) contained a footnote relating to the maternity regulation at issue and observed that they considered it prospective only and not controlling in their case. The Supreme Court obviously did not consider their observation well taken in their review of *Cerra*, supra. In doing so, the Supreme Court reversed all "Orders" of the "Courts" below and remanded the records of the Court of original jurisdiction with directions to proceed consonantly with the opinion. We submit that the order encompassed the assumpsit action against the board in which the lower Court has entered judgment for the district. *Cheryl Cerra v. East Stroudsberg Area School District*, 450 Pa. 207, 299 A.2d 277, 279, and footnote 2 (1973).

CONCLUSION

The appellant respectfully submits that the order and opinion of the Court of Common Pleas of Montgomery County constitutes an error of law and an abuse of discretion because not founded on precedent and facts supported by the record. The order and opinion of the Court should be reversed and the matter remanded with directions to proceed in accord with the mandate of your decision, Section 1130 of the Pennsylvania Public School Code and *Cheryl Cerra v. East Stroudsberg Area School District.*

Respectfully submitted,

s/ Richard W. Rogers

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