

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

----- :
 DR. KENNETH J. LaSALLE :
 :
 vs. :
 :
 CRANSTON SCHOOL :
 COMMITTEE :
 ----- :

D E C I S I O N

November 12, 1991

Held:

Good cause need not be shown to support a decision not to renew the contract of a school business manager.

The petitioner in this case is a school business manager whose employment contract with the Cranston School Committee has expired. The School Committee elected not to renew his contract. The petitioner is appealing this nonrenewal to the Commissioner of Education.

At the outset we must note that the petitioner has no tenure with the School District and that he had no reasonable objective expectation that his contract would be renewed. Under these circumstances we think that his position became, upon the expiration of his contract, analogous to that of an "at will" employee. In State Service "at will" employees are placed in the "Unclassified Service"¹. With regard to such "at will employees" our Supreme Court, in accordance with the common law, stated in Salisbury v. Stone, 518 A.2d 1355 (R.I.1986) that in:

Construing applicable statutes, this court has previously held that the Legislature intends unclassified state employees to serve at the pleasure of their appointing authority, absent a discriminatory discharge because of race, sex, age, physical handicap, political affiliation, or religious belief. Lynch v. Gonartz, 120 R.I. 149, 154-55, 386 A.2d 184, 187 (1978). Thus, although the Legislature has afforded unclassified employees the right of public employment free of certain forms of discrimination, it has not afforded them the right of public employment terminable only for cause. Id. Accordingly, as an unclassified employee, Salisbury could be dismissed without cause, as long as the dismissal was not grounded in prohibited discrimination. Since Salisbury failed to allege that his discharge was based upon one or more of the proscribed forms of discrimination, he failed to state a claim of unlawful dismissal.

1] We recognize, of course, that petitioner is not in the State "Unclassified Service" but we conclude that his employment status is governed by the principles of "at will employment" as exemplified by (e.g.) the "Unclassified Service".

In Salisbury v. Stone, supra, the Court also stated that:

An employee's interest in continued employment constitutes a property interest protected by the due process clause only if the interest is grounded in a "legitimate claim of entitlement" arising out of state law. Roth, 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561. To establish a legitimate claim, an employee must offer proof of more than a mere "unilateral expectation" of continued employment. Id. As a general rule, courts recognize a claim to entitlement if the employee establishes that a statute, rule, or contract grants a right to continued employment, absent a showing of cause. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 422, 430, 102S.Ct. 1148, 1155, 71 L.Ed2d 265, 274 (1982); Goss v. Lopez, 419 U.S. 565, 573, 95 S.Ct. 729, 735, 42 L.Ed.2d 725, 733-34 (1975); Arnett v. Kennedy, 416 U.S. 134, 151-52, 94 S.Ct. 1633, 1643, 40 L.Ed2d 15, 32 (1974). On the other hand, courts do not recognize a claim to entitlement if the employee serves at the will and pleasure of the employer. See, e.g. Bishop v. Wood, 426, U.S. 341, 344-45, 96 S.Ct. 2074, 2077, 48 L.Ed.2d 684, 690 (1976); Lynch v. Gontarz, 120 R.I. at 157, 386 A.2d at 188. As an unclassified state employee serving at the pleasure of his appointing authority, Salisbury could not claim, under state law, a legitimate entitlement to continued employment absent cause and, thus, did not possess a property interest requiring procedural due process protections.

We recognize that in Salisbury v. Stone, supra, our Supreme Court declined an invitation to reexamine its precedents governing "at will" employment on the grounds that Salisbury's rights, or rather absence of rights, resulted from statutes reflecting the common law rather than from the common law itself. While the Court, of course, would have authority to alter or amend the common law it had no power to alter or amend a statute. In the case at hand, however, all of this makes no difference since the Commissioner of Education is bound by the common law of "at will" employment as spelled out by our Supreme Court in Salisbury, supra

and also such cases as Bader v. Alpine Ski Shop, Inc. 505 A.2d 1162 (R.I. 1986) and School Committee of Providence v. Board of Regents for Education, 308 A.2d 788 (R.I.1973). These cases establish a rule which is identical to rule established in Salisbury, supra.

We should note the petitioner has no statutory right to a hearing to challenge his nonrenewal. He is, therefore, not in the same position as a nontenured teacher who has such a statutory right. Jacob v. Board of Regents, 117 R.I. 164, 365 A.2d 430 (1976).

In sum, then, we must find that the School Committee was within its rights to elect not to renew the petitioner's contract on the simple basis that it wanted to employ a new business manager.

We should note that the evidence which the petitioner has submitted convinces us that he was doing a fine job of administering the business concerns of the District including the school lunch program. The School Committee was quite probably in error in thinking otherwise. We are impressed with the witnesses he presented who all indicated that he worked well with town officials, fellow administrators and teachers. However, all of this can avail the petitioner nothing since the School Committee was not required to show "good cause" to justify his dismissal. The School Committee met whatever due process requirements might be owed to the petitioner by meeting with him in closed session to discuss his nonrenewal. And even this assumes that something of Drown v. Portsmouth School District, (1970) a First Circuit case dealing with the rights of a nontenured employee, survives the ruling of the Supreme Court in Board of Regents of State Colleges v. Roth, 408 U.S. 564, (1972).

It should also be made clear that the very issue in this case is whether the petitioner was entitled to a full "trial type" hearing on the question of his nonrenewal either at the School Committee level or, failing that, at the Commissioner's level. If the petitioner had a right to full "trial type" hearing this matter would be before us on a de novo basis. If, however, the petitioner was not entitled, under the law, to a full "trial type" hearing at the local level, neither would he be entitled to such a hearing before the Commissioner. The same rule would prevail with regard to any "intermediate type" hearing (e.g. Goss v. Lopez, 419 U.S. 565). In the present case we have reached the conclusion that the petitioner is not, and was not, entitled to any sort of a hearing at all either before the School Committee or before the Commissioner. Petitioner is simply an "at will" employee who may be dismissed at the conclusion of his contract merely because the School District does not wish to continue his employment. Salisbury v. Stone, supra. Because of this fact we cannot even apply the "abuse of discretion" standard of review which governs the review of many school committee actions since to do so would run contrary to the very definition of "at will" employment. See: Lynch v. Gontarz, 120 R.I. 149 (1978). Petitioner, as a school business manager, simply lacks the statutory protections and the concomitant due process rights which have been accorded to tenured teachers (§16-13-3), nontenured teachers (§16-13-2), and principals (§16-12.1-2).

Finally, we must state that we have doubts as to whether we have

jurisdiction over petitioner's case since, other than on the issue of due process, it does not appear to arise under ". . .any law relating to schools or education" (§16-39-1). The issue, however, is a close one and in the interest of facilitating review we have reached the merits of petitioner's claims. See: In Re Michael C. 487 A.2d 495, (R.I.1985).

Conclusion

Petitioner's appeal is denied and dismissed.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



Janice M. Baker
Interim Commissioner

November 12, 1991