Touro Law Review

Volume 17
Number 1 *Supreme Court and Local Government Law: 1999-2000 Term & New York State Constitutional Decisions: 2001 Compilation*

Article 7

March 2016

Appellate Division, First Department, Bertoldi v. New York

Sharon Ryan

Appellate Division, First Department, Bertoldi v. New York

Cover Page Footnote

17-1

EQUAL PROTECTION

U.S. CONST. amend. XIV, § 1:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

N.Y. CONST. art. I, § 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof.

SUPREME COURT, APPELLATE DIVISION FIRST DEPARTMENT

Bertoldi v. New York[1]
(decided August 10, 2000)

Plaintiffs, trial court clerks, and the New York State Court Clerks Association, brought suit against the State of New York challenging their classification and salary allocations upon the ground that appellate court clerks, who perform the same type of work with equivalent difficulty, were placed in a higher salary grade.[2] Plaintiffs contended that the different salary classifications denied them equal protection under the Federal[3] and New York State Constitutions.[4] Additionally, plaintiffs sought to recover the retroactive salary differential for the fourteen-year period prior to the commencement of this action pursuant to New York Civil Service Law §115 (NYCSL §115).[5] The Appellate Division held

---

[1] 712 N.Y.S.2d 113, (1st Dep't 2000).

[2] *Id.* at 114.

[3] U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *Id.*

[4] N.Y. CONST. art. I, § 11. This section provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

[5] N.Y. CIV. SERV. LAW § 115. This section provides in pertinent part: ". . . it is hereby declared to be the policy of the state to provide equal pay for equal work,

that under NYCSL §115, there was no requirement that equal work for equal pay be applied in all cases.[6] The court also held that plaintiffs were not members of a suspect class and no fundamental right was involved in the action.[7] Therefore, under equal protection jurisprudence, the rational relation standard of review was applied.[8] Furthermore, the court held the state's decision not to reclassify the salary allocation of the trial clerks, due to budgetary concerns, was rationally related to a legitimate government interest and denied plaintiffs' petition for the retroactive pay differential.[9]

In their suit before the Chief Administrative Judge ("CAJ"), plaintiffs argued that appellate court clerks were paid a higher salary for essentially the same type of work, involving the same level of difficulty as trial clerks, which entitled trial court clerks to the same pay.[10] Although the CAJ denied plaintiffs' appeal, the matter was later reviewed by the Classification Review Board, which determined that the work performed by appellate court clerks and trial court clerks was equivalent, entitling both classifications to the same pay.[11] Plaintiffs brought four Article 78 proceedings regarding the administrative orders, which were consolidated and heard by the Court of Appeals.[12] The Court of Appeals held that the CAJ could either upgrade the trial court clerks' salary grades or reallocate the appellate clerks to the same salary grades as the trial court clerks.[13] As a result of this Court of Appeals decision, the trial court clerks brought the instant action under NYCSL §115 to recover the retroactive salary differential for approximately fourteen years.[14]

---

and regular increases in pay in proper proportion to increase of ability, increase of output and increase of quality of work demonstrated in service." *Id.*

[6] *Bertoldi*, 712 N.Y.S.2d at 115.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Bertoldi*, 712 N.Y.S.2d at 115.

[12] *Id.* *See* Matter of New York State Court Clerks Ass'n v. Himber, 75 N.Y.2d 460, 553 N.E.2d 979 (1990).

[13] *Id.*

[14] *Id.*

The court began its analysis by first addressing plaintiffs' claim for retroactive pay under NYCSL §115.[15] The court reasoned that with respect to equal pay for equal work, the statute merely states a policy without empowering the court to enforce its objective.[16] The court further reasoned that the equal pay for equal work policy "need not be applied in all cases under any and all circumstances."[17] Moreover, in connection with plaintiffs' claim under the equal work for equal pay principle established in NYCSL §115, the court adopted the same reasoning set forth in *Matter of Asheden v. Comm'r of Dep't of Correctional Servs.*[18] and denied plaintiffs' claim.[19] Regarding plaintiffs' equal protection claim, the court applied the rational relation standard of review, reasoning that plaintiffs' claim did not involve a fundamental right or suspect classification.[20] Applying the rational relation standard in the instant case, the court held that the State's decision not to pay plaintiffs the retroactive pay differential was rationally related to a legitimate government interest - conserving limited state resources.[21] The court looked to the limited ability of the court system to absorb within its budget the high costs involved in paying the trial court clerks approximately fourteen years

---

[15] *Bertoldi*, 712 N.Y.S.2d at 115. Trial clerks and appellate clerks were engaged the in same work and were entitled to equal pay. Therefore, the Chief Administrative Judge was empowered to either upgrade the salary grades of the trial clerks or reallocate the appellate clerks to trial clerks' salary grade. *Id.*

[16] *Id.*

[17] Matter of Shattenkirk v. Finnerty, 97 A.D.2d 51, 57-58, 471 N.Y.S.2d 149, 155 (3d Dep't 1983).

[18] 103 A.D.2d 924, 925, 477 N.Y.S.2d 1012, 1014 (3d Dep't 1984). In *Ashenden*, employees at the Fishkill correctional facility brought suit to recover payment for overtime hours worked during a strike. Although employees at other correctional facilities were compensated in a manner similar to that sought by petitioners, the court held that the State's failure to equally compensate petitioners was due to an oversight or error, which was insufficient to establish that petitioners were not provided equal work for equal pay. *Id.*

[19] *Bertoldi*, 712 N.Y.S.2d at 115.

[20] *See Shattenkirk*, 97 A.D.2d at 55, 471 N.Y.S.2d at 153 (holding that "[f]or equal protection purposes, the appropriate standard for judicial review of a regulation, absent a suspect classification, is that it be sustained unless it bears no rational relation to a legitimate government interest"). *See also* Frontiero v. Richardson, 411 U.S. 677, 683-84 (1973) (holding that classifications by race, sex, alienage and national origin are inherently suspect).

[21] *Bertoldi*, 712 N.Y.S.2d at 115.

retroactive salary differential.[22] Additionally, the court held that the judiciary must refrain from reviewing matters involving the allocation of funds from the state treasury.[23]

In conclusion, Federal and New York State law are virtually identical with respect to equal protection jurisprudence.[24] Under New York State law, "the equal protection provisions of both the Federal and State Constitutions apply to the actions taken by administrative departments of local governmental units."[25] Under both federal and New York State law, absent a suspect classification, equal protection jurisprudence requires the courts to apply the rational relation standard of review, whereby the

---

[22] *Id.* *See* Matter of Altruda v. Forsythe, 184 A.D.2d 881, 881, 585 N.Y.S.2d 539, 541 (3d Dep't 1992) (holding that reducing state expenditures, salary compression and conservation allocation of state's limited resources is a legitimate governmental interest and applied rational relation standard of review).

[23] *Bertoldi*, 712 N.Y.S.2d at 115. *See* Matter of McDermott v. Forsythe, 188 A.D.2d 173, 175, 594 N.Y.S.2d 436, 438 (3d Dep't 1993) (holding that courts do not review the wisdom or propriety of decisions involving the public fisc). *See also* Gladstone v. New York City Bd. of Educ., 49 Misc. 2d 344, 347, 267 N.Y.S.2d 444, 446 (Sup. Ct. 1966) (quoting Stetler v. McFarlane, 230 N.Y. 400, 408, 130 N.E. 591, 594 (1921)) (holding that claims by public officers seeking salary compensation from the state treasury must be supported by statute).

[24] *Bertoldi*, 712 N.Y.S.2d at 115. *See* Dorsey v. Stuyvesant Town Corp., 299 N.Y. 512, 530-31, 87 N.E.2d 541, 548-49 (1949). In *Dorsey*, the court set forth the provisions of the 14th Amendment of the U.S. Constitution and Article I, Section 11 of the New York State Constitution and declared them to be identical in scope and application, stating:

> It is significant that in previous New York cases arising under the equal protection clauses of the Federal and State Constitutions it has not been suggested that the reach of the latter differed from that of the former . . . . Our decision then must rest on the co-ordinate commands expressed in the equal protection clauses of the Federal and State Constitutions. *Id.*

[25] Abrams v. Bronstein, 33 N.Y.2d 488, 492, 310 N.E.2d 528, 530 (1974) (holding that controversies which involve compensation are subject to equal protection analysis and when a state agency treats similarly situated persons differently that agency denies equal protection). *Id.* *See Bertoldi*, 712 N.Y.S.2d at 115 (holding that the 14th Amendment of the U.S. Constitution and Article I, Section 11 of the New York State Constitution "afford equal breadth of coverage.").

challenged statute or governmental action is upheld if it bears a rational relation to a legitimate governmental interest.[26]

Sharon Ryan

[26] *Frontiero*, 411 U.S. at 684. *See Bertoldi*, 712 N.Y.S.2d at 115. *See also Shattenkirk*, 97 A.D.2d at 55.

[This page left intentionally blank].