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Equal Protection: Mackston v. State of New York

Mackston v. State of New York[864]
(decided January 31, 1994)

The plaintiff brought suit seeking a declaratory judgment that the application of the former Judiciary Law section 221-g (now section 221-i), which provided an unfavorable salary differential between the judges of the City Court of the City of Long Beach and the judges of the City Court of White Plains, was unconstitutional and violative of his right to the equal protection of the laws under the Fourteenth Amendment of the Federal Constitution.[865] The second department held that former Judiciary Law section 221-g was not unconstitutional and did not violate the plaintiff's right to equal protection of the laws.[866]

The plaintiff, a retired judge from the City Court of the City of Long Beach, Nassau County, brought this suit some time after the Unified Court Budget Act was enacted on April 1, 1977,[867] seeking a declaratory judgment that the former Judiciary Law section 221-g violated his equal protection right under the Fourteenth Amendment.[868] In addition to the declaratory judgment, the plaintiff sought monetary relief, consisting of retroactive pay increases, including interest and attorney's fees.[869] After finding that the state lacked any rational basis for creating a statutory disparity of salaries between the judges of City Courts of Long Beach and White Plains, the trial court

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864. ___ A.D.2d ___, 607 N.Y.S.2d 357 (2d Dep't 1994).

865. *Id.* The Fourteenth Amendment provides in pertinent part that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1, cl. 3.

866. *Mackston*, ___ A.D.2d at ___, 607 N.Y.S.2d at 358.

867. The New York Court of Appeals in *Weissman v. Evans*, noted that the Unified Court Budget Act provided that "judicial personnel were henceforth State employees and that, concordantly, they would be placed on the State payroll on April 1, 1977" for the purpose of creating a state unified court system that is "*unimpeded by artificial local boundaries* and the diverse competing needs of local governmental agencies." 56 N.Y.2d 458, 462, 438 N.E.2d 397, 398, 452 N.Y.S.2d 864, 865 (1982).

868. *Mackston*, ___ A.D.2d at ___, 607 N.Y.S.2d at 358.

869. *Id.* at ___, 607 N.Y.S.2d at 358.

granted the plaintiff both the declaratory judgment and the monetary relief sought.[870]

In reversing the trial court, the appellate division reaffirmed the New York Court of Appeals' well-settled holdings in *Cass v. State*[871] and *Weissman v. Evans*[872] that, in evaluating the "constitutionality of a statutorily created judicial pay disparity among Judges of comparable courts," the geographical distinctions between the areas where the courts are situated must be based upon a rational basis.[873] The court reasoned that, based upon governmental statistics, because the full-time population and cost of living in White Plains were found to be greater and substantially higher, respectively, than that of Long Beach, there

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870. *Id.* at ___, 607 N.Y.S.2d at 358-59.

871. 58 N.Y.2d 460, 448 N.E.2d 786, 461 N.Y.S.2d 1001 (1983). In *Cass*, the court of appeals affirmed that a "State budgetary act 'will not be struck as violative of equal protection merely because it creates differences in geographical areas . . . . As long as the State had a rational basis for making such a distinction, it will pass constitutional muster under an equal protection challenge.'" *Id.* at 463-64, 448 N.E.2d at 787, 461 N.Y.S.2d at 1002 (quoting Tolub v. Evans, 58 N.Y.2d 1, 8, 444 N.E.2d 1, 4, 457 N.Y.S.2d 751, 754 (1982)).

872. 56 N.Y.2d 458, 438 N.E.2d 397, 452 N.Y.S.2d 864 (1982). In *Weissman*, the court of appeals held that there was no rational basis for the disparate judicial salaries between the District Court Judges of Suffolk County District Court and of Nassau County District Court because there was no geographic distinction to justify such disparity in similar adjacent counties on Long Island. *Id.* at 466, 438 N.E.2d at 400-01 452 N.Y.S.2d at 867-68. The court of appeals stated the applicable rule that "while equal protection does not necessarily require territorial uniformity . . . '[a] territorial distinction which has no rational basis will not support a state statute.'" *Id.* at 464-65, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (quoting Manes v. Goldin, 400 F. Supp. 23, 29 (E.D.N.Y. 1975), *aff'd* 423 U.S. 1068 (1976)). The court further noted that although geographical distinctions "'are not, in and of themselves, violative of the Fourteenth Amendment . . . a state must demonstrate . . . that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy.'" *Id.* at 465, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (quoting Levy v. Parker, 346 F. Supp. 897, 902 (E.D. La. 1972) *aff'd* 411 U.S. 978 (1973)). *See also* Weissman v. Bellacosa, 129 A.D.2d 189, 517 N.Y.S.2d 734 (2d Dep't. 1987) (extending the holding in *Weissman* to include County Court Judges of Suffolk and Nassau Counties).

873. *Mackston*, ___ A.D.2d at ___, 607 N.Y.S.2d at 359.

was such rational basis for the disparate salaries on the basis of geography.[874] The court specifically noted that between 1981 and 1982, the cost of purchasing a residential home in White Plains was twice the amount of one on Long Island, and the per capita property taxes were higher in White Plains than in Long Beach.[875] Consequently, because it was more expensive to live in White Plains than in Long Beach, the court held that Judiciary Law section 221-g, which allows the geographically disparate salaries between the judges of the City Court of Long Beach and the judges of City Court of White Plains, was supported by a rational basis, was not unconstitutional and did not violate plaintiff's right to the equal protection of laws under the Fourteenth Amendment of the Federal Constitution.[876]

If this suit was brought under the New York State Constitution, article I, section 11, the outcome of the case would probably have been the same.[877] In *Burke v. Crosson*,[878] the plaintiffs, County Court Judges of Onondaga County, brought suit seeking to declare that Judiciary Law section 221-d deprived them of equal protection of laws under both the New York State and Federal Constitutions.[879] In *Burke*, the court held that "the significantly higher cost of living in Nassau, Suffolk and Westchester Counties provides a rational basis for the geographically disparate salaries between those counties and Onondaga County."[880]

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874. *Id.* at ___, 607 N.Y.S.2d at 359.

875. *Id.* at ___, 607 N.Y.S.2d at 359.

876. *Id.* at ___, 607 N.Y.S.2d at 359. The court stated that "as long as any conceivable statement of facts will support a classification by the Legislature, it cannot be held to be violative of equal protection." *Id.* at ___, 607 N.Y.S.2d at 359 (citing Maresca v. Cuomo, 64 N.Y.2d 242, 250, 475 N.E.2d 95, 98, 485 N.Y.S.2d 724, 727 (1984)).

877. Similar to United States Constitution, amendment XIV, § 1, cl. 3, the New York State Constitution, article I, § 11 provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11.

878. 191 A.D.2d 997, 595 N.Y.S.2d 272 (4th Dep't 1993).

879. *Id.* at 997, 595 N.Y.S.2d at 273.

880. *Id.* at 998, 595 N.Y.S.2d at 273.

However, in another fourth department case, *Barth v. Crosson*,[881] however, the court held that "because Onondaga, Oneida, Erie and Monroe Counties are all located within the Fourth Department," there was no rational basis for the geographically disparate salaries of the family court judges within those counties.[882] The plaintiffs, family court judges serving Onondaga and Oneida Counties, sought a declaratory judgment that Judiciary Law section 221-e, which provides disparate salaries between them and judges serving in twelve other counties in the state violated their right to equal protection under the State and Federal Constitutions.[883] In regard to Onondaga, Oneida, Erie and Monroe Counties, the court specifically noticed that the duties, responsibilities, and caseloads among the Family Court Judges were "comparable," while the differentials in the costs of living among those counties were "insignificant."[884] In addition, the court reasoned that, because there was a "'true unity of . . . judicial interest . . . indistinguishable by separate geographic considerations [among the counties in question],'" the plaintiffs were entitled to their declaratory judgment.[885] The court, however, distinguished Erie and Monroe Counties from the other nine counties.[886] The court held that, because of the "higher cost of living in those first and second department counties, as compared to Onondaga and Oneida counties, [there was] a rational basis for the geographically disparate salaries."[887]

In the case at bar, the plaintiff, a retired judge of the City Court of White Plains, served Westchester County, while judges

881. ___ A.D.2d ___, 607 N.Y.S.2d 200 (4th Dep't 1993).

882. *Id.* at ___, 607 N.Y.S.2d at 201.

883. *Id.* at ___, 607 N.Y.S.2d at 201. *See* N.Y. CONST. art. I, § 11; U.S. CONST. amend. XIV, § cl. 3.

884. *Barth*, ___ A.D.2d at ___, 607 N.Y.S.2d at 201.

885. *Id.* at ___ 607 N.Y.S.2d at 201 (quoting Davis v. Rosenblatt, 159 A.D.2d 163, 171, 559 N.Y.S.2d 401, 405-06 (3d Dep't 1990) (quoting Weissman v. Evans, 56 N.Y.2d 458, 463, 438 N.E.2d 397, 399, 452 N.Y.S.2d 864, 866 (1982))).

886. *Id.* at ___, 607 N.Y.S.2d at 201. The nine counties were the Bronx, Dutchess, Kings, Nassau, Orange, Queens, Rockland, Suffolk and Westchester Counties.

887. *Id.* at ___, 607 N.Y.S.2d at 202.

of the City Court of Long Beach served Nassau County. Both counties are within the second department. Although plaintiff may have argued that the costs of living in Nassau and Westchester, second department counties, were found to be significantly higher than in Onondaga or Oneida, fourth department counties, the costs of living in Long Beach was also significantly lower than in White Plains. Thus, as in *Mackston*, state and federal constitutional geographical distinctions are not limited only between counties and appellate departments, but also between the cities within the counties, as well as within the appellate departments. Furthermore, even if the duties, responsibilities, and caseloads among the city court judges in both White Plains and Long Beach, as reasoned in *Barth*, were shown to be comparable, a rational basis for geographically disparate salaries may still be satisfied by demonstrating a significant differential in population, and cost of living.[888] Therefore, even if the suit had been brought under the New York State Constitution, it is likely that the outcome would have been the same.

People v. Peart[889]
(decided October 12, 1993)

Defendant claimed that his right to equal protection, pursuant to the State[890] and Federal[891] Constitutions, was violated because

888. *See* Edelstein v. Crosson, 187 A.D.2d 694, 590 N.Y.S.2d 277 (2d Dep't 1992). In *Edelstein*, the plaintiffs, six County Court Judges from Dutchess, Rockland, and Orange Counties, submitted evidence that demonstrated the similarity between their caseloads and the caseloads of the Westchester County Court Judges, while the defendants submitted evidence that demonstrated that the population and the cost of living in Westchester County were higher than in Dutchess, Rockland, and Orange Counties. *Id.* at 696, 590 N.Y.S.2d at 278. The court held that there was a rational basis for the disparate salaries where the average home in Westchester was sold in late 1987 for $361,094 while in late 1987, an average home in Orange County sold for $132,050. By contrast, in Rockland County the average home sold for $185,000 in 1988, and in Dutchess County, for $149,270, in 1989. *Id.*

889. 197 A.D.2d 599, 602 N.Y.S.2d 424 (2d Dep't 1993).

890. N.Y. CONST. art. I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof.").

the prosecutor's use of its peremptory challenge was racially discriminatory.[892] The Appellate Division, Second Department held that the defendant's right to equal protection was violated because the prosecutor failed to give a race-neutral explanation for its use of its peremptory challenges.[893]

On March 8, 1991, the defendant was convicted of "criminal sale of a controlled substance in the third degree" and "criminal possession of a controlled substance in the third degree."[894] During voir dire, the prosecutor peremptorily challenged the only two black members on the venire panel.[895] The defendant objected to the exclusion of these potential jurors as a violation of *Batson v. Kentucky*.[896] The prosecutor explained that although the potential juror was "neutral," she was not a "strong" prosecution juror.[897] In addition, the prosecutor failed to point to any facts in support of these feelings.[898] The trial court concluded that the prosecutor provided a race-neutral explanation and thus, excluded the juror.[899] The defendant was subsequently convicted of both charges and appealed.[900]

The Appellate Division, Second Department found that the defendant's right to equal protection had been violated, reasoning that the prosecution failed to provide a race-neutral explanation for its peremptory challenge.[901] The court noted that the

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891. U.S. CONST. amend. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

892. *Peart*, 197 A.D.2d at 599, 602 N.Y.S.2d at 424.

893. *Id.* at 600, 602 N.Y.S.2d at 425.

894. *Id.* at 599, 602 N.Y.S.2d at 424.

895. *Id.*

896. 476 U.S. 79 (1986). In *Batson*, the Supreme Court of the United States held that the Equal Protection Clause of the Federal Constitution prohibits the prosecution from using peremptory challenges for discriminatory purposes. *Id.* at 96. Once the defendant establishes a prima facie case that the prosecution's use of its peremptory challenges is discriminatory, the burden is shifted to the prosecution to present a racially neutral explanation for its challenges. *Id.* at 97.

897. *Peart*, 197 A.D.2d at 599, 602 N.Y.S.2d at 424.

898. *Id.*

899. *Id.* at 600, 602 N.Y.S.2d at 424.

900. *Id.* at 599, 602 N.Y.S.2d at 424.

901. *Id.* at 600, 602 N.Y.S.2d at 424.