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Equal Protection: McDermott v. Forsythe

THIRD DEPARTMENT

McDermott v. Forsythe[930]
(decided March 4, 1993)

Petitioners, employees of the respondent, Department of Civil Service, brought an article 78 proceeding claiming that the establishment of various effective dates for their reclassification to newly created titles violated their equal protection rights under the State[931] and Federal[932] Constitutions.[933] The appellate division denied petitioners' equal protection claim holding that respondent's classification was rationally related to a legitimate state objective.[934]

The Division of Classification Compensation of the Department of Civil Service created new job titles of Secretary I and Secretary II, and reclassified petitioners to these new titles which reflected the job tasks being performed by them.[935] The Department's Division of Budget (hereinafter DOB) authorized the creation of these titles pursuant to Section 121 of the Civil Service Law.[936] The DOB set two dates, October 26, 1989 and

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930. 188 A.D.2d 173, 594 N.Y.S.2d 436 (3d Dep't 1993).

931. N.Y. CONST. art. I, § 11. This section provides in pertinent part that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

932. U.S. CONST. amend. XIV, § 1. This section provides in pertinent part that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

933. *McDermott*, 188 A.D.2d at 174-75, 594 N.Y.S.2d at 437.

934. *Id.* at 176, 594 N.Y.S.2d at 438.

935. *Id.* at 174, 594 N.Y.S.2d at 437.

936. *Id.*; N.Y. CIV. SERV. LAW § 121 (McKinney 1983 & Supp. 1993) states in pertinent part:

> Any classification or reclassification of a position and any allocation or reallocation of a position to a salary grade made by the director of the classification and compensation division or the state civil service commission pursuant to the provisions of this article shall become effective on the first day of the fiscal year following approval by the director of the budget and the appropriation of funds therefor, except that the director of the budget may, in his discretion, authorize an effective date prior to the first day of the ensuing fiscal year.

November 2, 1989, on which titles in the Administrative Service bargaining unit and the Institutional Service bargaining unit respectively would become effective.[937] However, due to budgetary and financial reasons, the DOB allowed each agency to set the effective dates for the approval of position reclassification.[938] Depending on each agency's ability to incorporate these costs, each agency selected an effective date applicable to all of its employees.[939]

While some agencies were able to establish the DOB dates as their effective date, the respondent agencies set their effective date for the reclassification of petitioners later than those of the DOB.[940] The petitioners sought a declaration that the respondent agency's action of establishing effective dates later than the DOB dates, while other agencies established earlier dates, was arbitrary and capricious.[941] Petitioners claimed that their rights to equal protection under both the State and Federal Constitutions were violated since "similarly situated employees were being compensated differently."[942]

The appellate division began its analysis by examining the classification involved in order to determine the constitutional standard to be used. Since the classification in this case did not involve a suspect class or a fundamental right, the standard the court applied was whether the classification was rationally related to a legitimate state objective.[943] Under the rational relation

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Id.

937. *McDermott*, 188 A.D.2d at 174, 594 N.Y.S.2d at 437.

938. *Id.*

939. *Id.*

940. *Id.*

941. *Id.*

942. *Id.*

943. *Id.* at 175, 594 N.Y.S.2d at 438; *see also* People v. Whidden, 51 N.Y.2d 457, 415 N.E.2d 927, 434 N.Y.S.2d 937 (1980) (dealing with statutory rape law that makes it a felony for only a male to engage in sexual intercourse with an underage female); Shattenkirk v. Finnerty, 97 A.D.2d 51, 471 N.Y.S.2d 149 (3d Dep't 1983) (holding that the withholding of an 8% salary increase from exempt state employees earning in excess of $23,065 did not violate equal protection because it was directly related to the state fiscal well being).

standard the court gives great deference to the legislatures and governmental bodies, and it does not question the wisdom of their decisions, nor substitute its own, especially with regard to allocation of public funds.[944]

In *Abrams v. Bronstein*,[945] the court of appeals stated that the first step in applying the rational relation standard is to ascertain the "basis of the classification involved and the governmental objective purportedly advanced by the classification."[946] Then the court will determine whether the "classification rests upon some ground of difference having a fair and substantial relation" to the legitimate state interest.[947] In *Abrams*, police officers from the New York City Police Department participated in an examination for the purpose of promoting them to lieutenant.[948] Those who failed challenged the rating of the exam in a lawsuit.[949] The city entered into a stipulation in which it agreed that if the challenge was successful, the city would grant petitioners retroactive benefits for all purposes except back pay.[950] The city found some mistakes in rating the exams, and therefore, a new list of eligibles was issued.[951] Plaintiffs in *Abrams* were officers who failed the exam but were not among the petitioners who sued the city to regrade the exams.[952] Plaintiffs asserted that they were denied the retroactive salary increment, while those who sued for rerating were granted the retroactive date of appointment for the purpose of determining salary increment.[953] Since this classification was based upon

944. *See* Tolub v. Evans, 58 N.Y.2d 1, 8, 444 N.E.2d 1, 4, 457 N.Y.S.2d 751, 754 (1982) ("In matters concerning the allocation of the public fisc, the courts do not review the Legislature's wisdom or the propriety of their decisions.").

945. 33 N.Y.2d 488, 310 N.E.2d 528, 354 N.Y.S.2d 926 (1974).

946. *Id.* at 492, 310 N.E.2d at 531, 354 N.Y.S.2d at 930.

947. *Id.* at 492-93, 310 N.E.2d at 531, 354 N.Y.S.2d at 930 (quoting Reed v. Reed, 404 U.S. 71, 76 (1971)).

948. *Id.* at 490, 310 N.E.2d at 529, 354 N.Y.S.2d at 928.

949. *Id.*

950. *Id.*

951. *Id.* at 491, 310 N.E.2d at 530, 354 N.Y.S.2d at 928.

952. *Id.* at 490, 310 N.E.2d at 529, 354 N.Y.S.2d at 928.

953. *Id.* at 493, 310 N.E.2d at 531, 354 N.Y.S.2d at 930.

participation in the prior lawsuit and not "as a result of participating in the *examination*," the classification "ha[d] no reasonable relation to a proper governmental objective."[954]

In *McDermott*, the appellate division reasoned that the classification created was based on each agency's ability to absorb the new cost of reclassification of titles.[955] Furthermore, the state had a legitimate objective of maintaining a balanced state and agency budget and of preventing financial or budgetary burdens on the government agencies.[956] The court found that the state was actually experiencing a shortage of funds at the time, and reasoned that the actions of the respondent was rationally related to these fiscal constraints that affected the agencies' abilities to reclassify petitioners to the new titles.[957] Therefore, respondents' actions were neither arbitrary nor capricious.[958]

The court denied petitioners' reliance on *Abrams* and *Margolis v. New York City Transit Authority*.[959] Discussing *Abrams*, the court argued that the classification for salary increment had no relation to any legitimate government objective, and therefore, was arbitrary.[960] In the *Margolis* case, the legitimacy of the Transit Authority's objective of salary compression was questionable since two or three employees were being excluded from salary increases.[961] In the case at bar, petitioners were not similarly situated as other employees of other agencies who had the financial resources to establish earlier effective dates. The

954. *Id.* at 495, 310 N.E.2d at 532, 354 N.Y.S.2d at 932 (emphasis in original).

955. *McDermott*, 188 A.D.2d at 176, 594 N.Y.S.2d at 438.

956. *Id.*

957. *Id.*

958. *Id.*

959. 157 A.D.2d 238, 555 N.Y.S.2d 711 (1st Dep't 1990). In *Margolis*, the Transit Authority created a new superintendent position with more responsibilities and qualified all trainmasters in the system to this new title except plaintiff who was denied the new title and thus the wage increase. Plaintiff claimed he was denied his Equal Protection right under the Fourteenth Amendment. *Id.* at 712.

960. *McDermott*, 188 A.D.2d 173, 176-77, 594 N.Y.S.2d 436, 438-39 (3d Dep't 1993).

961. *Id.* at 177, 594 N.Y.S.2d at 438-39.

court further noted that employees of the same agency were treated similarly since the same effective date was established as to all of them.[962]

Section 115 of the Civil Service Law provides that the policy of the state is "to provide equal pay for equal work."[963] However, the New York courts have never required this principle to be applied in every case regardless of the conditions, which is clearly evidenced by this case. However, the *McDermott* court noted that "[e]qual protection, especially in matters regarding the State budget, 'does not require that all classifications be made with mathematical precision.'"[964]

The Equal Protection Clauses of the State and Federal Constitutions provide for similar protection in such cases.[965] In fact, the United States Supreme Court uses the same standard for review of state action in cases not involving a suspect class or a fundamental right.[966] Further, the *McDermott* court relied not only on New York cases but also on United States Supreme Court decisions that applied the rational relation standard in arriving at its decision. The analysis of an equal protection claim under both the New York and United States Constitutions is identical.

New York State Clinical Laboratory Ass'n Inc. v. Kaladjian[967] (decided December 16, 1993)

Petitioner, an organization of private diagnostic laboratories, claimed that the 1992 amendment to the Official Compilation of the New York Codes, Rules, and Regulations title 18 section

962. *Id.* at 177, 594 N.Y.S.2d at 439.

963. N.Y. CIV. SERV. LAW § 115 (McKinney 1988).

964. *McDermott*, 188 A.D.2d at 177, 594 N.Y.S.2d at 439 (quoting Shattenkirk v. Finnerty, 97 A.D.2d 51, 57-58, 471 N.Y.S.2d 149, 154 (3d Dep't 1983)).

965. *Id.* at 175, 594 N.Y.S.2d at 437 ("The breadth of coverage afforded by these two clauses has been held to be equal.").

966. *See* Reed v. Reed, 404 U.S. 71 (1971) (using a mere rationality standard to strike down a statute preferring men over women as administrators of estates).

967. 194 A.D.2d 189, 605 N.Y.S.2d 499 (3d Dep't 1993).