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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 1984CV01694

Notice Sent
09.21.2021 (NS)
-RBD/J.G.D.
-CMCSC/R.L.Q.
-LLC/J.F.D.

KIMBERLY LYDON

REC'D CIV. SERVICE COM.
SEP 27 2021 9:19:45

vs.

CIVIL SERVICE COMMISSION & another¹

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT TOWN MANAGER'S MOTIONS FOR JUDGMENT ON THE
PLEADINGS**

On May 28, 2019, the plaintiff, Kimberly Lydon ("Lydon"), brought this action against the defendants, the Civil Service Commission ("CSC") and the Town Manager ("Manager") of the Town of Stoughton ("Stoughton"). Lydon alleges that she was unlawfully terminated from her employment as a Stoughton police officer despite the absence of what she asserts were tenure protections she was entitled to. The matter is before the court on Lydon's motion for judgment on the pleadings and the Manager's cross-motion for the same. For the reasons set forth below, Lydon's motion is **DENIED**, the Manager's motion is **ALLOWED**, and the CSC's decision is **AFFIRMED**.

BACKGROUND

On November 7, 2016, Lydon was extended a conditional offer of employment as a police officer subject to her successful completion of the police academy. She entered the Boston Police Academy later that year and completed her training there on June 16, 2017. On that day, the Boston Police Commissioner ("BP Commissioner") came to the training facility and swore in the new Boston police officers.

¹ Town Manager of the Town of Stoughton in His Capacity as the Appointing Authority

On June 21, 2017, the graduation ceremony for the academy was held in Boston. During this ceremony, the Boston Police Commissioner administered an oath of office referencing his department. This oath did not officially apply to recruits from other jurisdictions but rather was ceremonial.

Stoughton's policy and practice requires police academy graduates to take its police department's oath of office before the new officers are authorized to carry out any police duties. On June 22, 2017, Lydon took this oath. Consistent with this policy and practice, Lydon performed no duties as a police officer prior to June 22, 2017.

After the Police Chief for Stoughton shared her concerns about Lydon's conduct during her twelve-month probationary period with the Interim Town Manager, the Manager decided to terminate Lydon's employment. A letter to that effect was delivered to Lydon on the morning of June 21, 2018.

The CSC determined that Lydon's probationary period commenced on June 22, 2017, and accordingly she was terminated within the probationary period when tenure protections did not apply. Consequently, the CSC concluded it lacked jurisdiction to hear her appeal.

DISCUSSION

I. Legal Standard

Pursuant to G. L. c. 30A, § 14, a court may only set aside an administrative agency's decision upon a finding that the decision is unsupported by substantial evidence, arbitrary and capricious, an abuse of discretion, or not in accordance with the law. G. L. c. 30A, §§ 14(7)(e), (g); see *McGovern v. State Ethics Commission*, 96 Mass. App. Ct. 221, 226-227 (2019). The plaintiff bears the burden of demonstrating the invalidity of the challenged decision. See *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). In evaluating whether a plaintiff has satisfied this burden, a court must "give due

weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” G. L. c. 30A, § 14(7); see *Doe No. 10216 v. Sex Offender Registry Bd.*, 447 Mass. 779, 787 (2006). Applying this standard, I conclude the CSC’s decision must be affirmed.

II. Application of the Legal Standard

At its core, this case boils down to whether Lydon had completed her probationary period pursuant to G. L. c. 31, § 61, and therefore should have been afforded tenured employee rights under G. L. c. 31, § 41. Stoughton contends, and CSC found, that Lydon was terminated during her probationary period and therefore was not entitled to tenure protection. If she was not tenured, the CSC could properly conclude (as it did) that statutorily it had no jurisdiction under G. L. c. 31, § 41 to consider her administrative appeal.

That statute provides, in relevant part, in its first paragraph: “...a tenured employee shall not be discharged...without his written consent. ... Before such action is taken, such employee shall be given a written notice by the appointing authority...” The statute continues:

If it is the decision of the appointing authority, after hearing, that there was just cause for an action taken against a person pursuant to the first or second paragraphs of this section, such person may appeal to the commission...

Another statute, G. L. c. 31, § 61, governs police officer probationary periods. It states:

Following his original appointment as a permanent full-time police officer or fire fighter in a city, or in a town where the civil service law and rules are applicable to such position, *a person shall actually perform the duties of such position on a full-time basis for a probationary period of twelve months before he shall be considered a full-time tenured employee in such position*, except as otherwise provided by civil service rule. The administrator, with the approval of the commission, may establish procedures to ensure the evaluation by appointing authorities, prior to the end of such probationary period, of the performance of persons appointed as regular police officers or fire fighters.

(Emphasis added). Case law confirms that *graduation* (as opposed to completion of training or studies) is necessary to be elevated to tenured status:

While one may speak of a recruit’s “duty” to attend the academy, this is not one of the

duties of a full-fledged police officer. Looking to the plain meaning of the words of the statute, “actual performance of the duties of such position” refers to *the graduated officer with the authority to exercise police powers*, as distinct from the student officer, who is in the process of learning to exercise such powers properly.

Board of Selectmen of Brookline v. Smith, 58 Mass. App. Ct. 813, 817 (2003) (emphasis added).

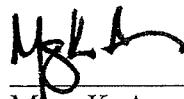
Here, the CSC found as a matter of fact based on substantial evidence that Lydon’s probationary period commenced on June 22, 2017. Such a finding was reasonable. Furthermore, such a finding is dispositive as to the CSC’s ultimate determination regarding its lack of jurisdiction because Lydon was terminated prior to when she would have obtained tenured employee protections.

It is well-established that “a reviewing court may not displace an agency’s deliberative choice between two fairly conflicting views of the record evidence.” *McGovern*, 96 Mass. App. Ct. at 231. Based on that deference, this court must affirm the discretionary decision of the CSC.

ORDER

For the foregoing reasons, it is hereby ordered that Lydon’s motion is **DENIED**,

The Motion of the Town Manager of the Town of Stoughton in His Capacity as the Appointing Authority is **ALLOWED**, and the CSC’s decision is **AFFIRMED**.



Mary K. Ames
Justice of the Superior Court

Dated: September 21, 2021