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Administrative Law—Civil Service Reclassification

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bers rights are definite, fixed, and not subject to the mere whim of the legislature. It was pointed out that rigid adherence to an obsolete mortality table could spell bankruptcy for the system.

The dissent's position is very plausible; the construction of the constitutional provision as a guarantee of rights under the statute is consistent with the language used. But the majority, while perhaps passing over some of the statutory language lightly, may be keeping a conscious eye on employees who have relied on the more favorable construction in choosing their life work. The majority construction treats the employees more equitably; the dissent's position, while following the state's financial framework established under the statute, leaves the employees without a part of the inducement which may have influenced their choice of state employment.

Civil Service Reclassification

A. *Clare v. Silver*:

Civil Service classifications, although subject to judicial review, will be set aside only if "without rational basis and wholly arbitrary",[27] *i.e.*, if the Commission's decision is clearly illegal or amounts to an abuse of descretion.[28]

In *Clare v. Silver*,[29] the Court reviewed a civil service classification and held that the classification of a county detective as a process server did not violate his tenure rights as an honorably discharged veteran.[30] He had had no right to be assigned all the duties of a county detective, but rather had been required to perform those duties actually assigned to him by the district attorney, and his actual duties for the past seven years had been limited to process serving. The Court felt that the classification did not *remove* the plaintiff from his county detective position. His work remained the same after the classification, since the Commission, in systematizing the work in the district attorney's office, followed a pattern which had already been worked out and was in operation at the time. Thus the classification was upheld as not without a rational basis.

27. Meenaugh v. Dewey, 286 N.Y. 292, 306, 307, 36 N.E.2d 211, 219 (1941).

28. People ex rel. Schau v. McWilliams, 185 N.Y. 92, 77 N.E. 785 (1906). In *People ex rel. Sims v. Collier*, 175 N.Y. 196, 67 N.E. 309 (1903), the Court considered the Civil Service Commission's action as judicial or quasi-judicial in its nature. Three years of experience under this decision proved that the Court had in effect assumed the functions of the Commissioners. Thus, in a change of policy in 1906, the classifications were deemed to be more of a legislative or executive than judicial character. This changed the review action from certiorari to mandamus.

29. 4 N.Y.2d 107, 172 N.Y.S.2d 801 (1958).

30. NEW YORK CIVIL SERVICE LAW §22 provides that any honorably discharged veteran of the armed forces may not be removed from a civil service position of employment except for incompetency or misconduct after a hearing upon due notice.

It is apparent that the classification did not create new positions or offices, nor did it fill those positions with new men, but it only continued old existing offices with persons who at the time of the classification filled such offices. This is similar to a *reclassification* problem, to which an analogy may be drawn. In the present case, the plaintiff's tenure was no more affected than if such a reclassification had transferred his old position from the exempt to competitive class, in which case he would have been transferred along with his position without examination.[31]

B. *Mandle v. Brown*:

Under the Civil Service Law,[32] it has been declared that an increase in the salary of a civil service employee, appropriate to the next higher grade in the civil service, constitutes a promotion.[33] The increase must be beyond the limit fixed for the grade.[34] If a promotion is involved, the requirement of a competitive examination, whenever practicable, to determine the merit and fitness of applicants, acording to the New York State Constitution,[35] must be fulfilled. However, the Civil Service Commission is given broad discretionary powers in determining the practicability of a competitive examination in each particular case.[36]

In *Mandle v. Brown*,[37] the Court faced the problem of whether or not the appointment of previous Attorney-Grade 4 civil service employees to the new positions of Principal Attorney, Senior Attorney, and Supervising Attorney, without a competitive examination, was valid. The reclassification which created the three new positions, was the culmination of a comprehensive plan of job classification in the city of New York, affecting 125,000 positions.

The plaintiff contended that the assignment of former tax counsel employ-

31. Fornara v. Schroeder, 261 N.Y. 363, 185 N.E. 498 (1933).

32. N. Y. CIVIL SERVICE LAW §16 provides:
> For the purposes of this section an increase in the salary or other compensation of any person holding an office or position within the scope of the rules in force hereunder beyond the limit fixed for the grade in which such office or position is classified, shall be deemed a promotion . . . .

33. People ex rel. Perrine v. Connolly, 217 N.Y. 570, 112 N.E. 579 (1916); People ex rel. Bacon v. Knox, 71 App. Div. 306, 75 N.Y.Supp. 896 (1st Dep't 1902); O'Malley v. Board of Education of City of New York, 160 App. Div. 261, 145 N.Y.Supp. 645 (1st Dep't 1914).

34. People ex rel. Stokes v. Tully, 108 App. Div. 345, 95 N.Y.Supp. 916 (1st Dep't 1905).

35. N. Y. CONSTITUTION Art. V. §6 provides:
> Appointments and promotions in the civil service . . . shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive . . . .

36. See *e.g.*, Burke v. Fields, 279 App. Div. 674, 108 N.Y.S.2d 313 (2d Dep't 1951).

37. 5 N.Y.2d 51, 177 N.Y.S.2d 482 (1958).

ees (who were included in the Attorney-Grade 4 classification), to the three new positions without a competitive examination, constituted "promotions" in violation of the New York Constitution, on the grounds that the duties of tax counsel were lower in importance and responsibility. The Court answered this contention with a further elucidation of the opinion given in *Clare v. Silver*, which was decided earlier in the same term.[38] There, a classification was sustained since it had "merely systematized the work in the District Attorney's office according to a pattern which had already been worked out."[39] This is but another way of saying that where a reclassification conforms to the realities by titling a position according to the duties incumbent to that position, then the "transfer" of the holders of that old position to the newly created title or position, will not require a competitive examination to conform to the New York Constitution. In effect, such a reclassification does not change the nature of anyone's work, but only the titles of positions for administrative purposes. The specialization of duties under the one general or broad title, had occurred prior to the action by the Civil Service Commission, and the reclassification actually approved and validated such specialization. Such a procedure will be more equitable as the ability of certain employees will be officially recognized, and the salaries of the new positions will more closely coincide with the value of those positions in the total scheme, or entire department.

Justice Fuld, in his dissent, recognized the validity of the reclassification in question, but was disturbed by the fact that the previous Attorney-Grade 4 employees had been first provisionally classified as Attorneys (a new position), and upon completion of the reclassification, some of those were then transferred to the higher grades of Principal Attorney, Senior Attorney, and Supervising Attorney. To Justice Fuld, this second transfer was a promotion to a higher salary grade "by a non-competitive re-evaluation of their actual duties", and so was void. The "non-competitive re-evaluation" referred to, was the on-the-job survey which consisted primarily of interviews, conducted after the provisional appointment. The dissenting opinion feared that such a scheme of provisional appointments could "open the door to evasion" of the purpose of civil service requirements. Since the first assignments were by their terms only provisional and pending the completion of the on-the-job survey, and there was nothing to indicate that the survey was undertaken as an evasive device, the dissenter's fears do not seem persuasive. If such a survey were undertaken after an unconditional assignment, or if it were unduly prolonged, or indicated the presence of bad faith, the majority's position in the present case would not foreclose the Court from requiring an examination upon a reclassification.[40]

38. 4 N.Y.2d 107, 172 N.Y.S.2d 801 (1958); see next preceding case note.
39. *Id.*, at 112, 172 N.Y.S.2d at 804.
40. N. Y. CIV. PRAC. ACT §1295 provides:
If a triable issue of fact is duly raised, it shall be forthwith tried before a court . . . .

In *Mandle v. Brown*,[41] there was no promotion involved which violated the New York Constitution or the Civil Service Law. "A transfer from one position within a grade to another in the same grade with more important duties and with larger salary is regarded in a sense as a promotion. Such is not, however, the statutory meaning of the term."[42]

Notice to Political Subdivision for Administrative Hearing

Section 46(8) of the Correction Law empowers the Correction Commission to close any county jail which is unsafe, unsanitary or inadequate to provide for the separation and classification of prisoners required by law.[43] In acting to close a county jail, the Commission must send a citation to the sheriff and clerk of the board of supervisors to appear before the Commission and show cause why the jail should not be closed. After a hearing, the Commission is empowered to order the jail closed, the county having ninety days within which to institute an Article 78 proceeding for review of the order.

In 1955, the Commission ordered an inspection of the Cayuga County jail resulting in two reports. One of these reports related only to a general uncleanliness while the other was a great deal more detailed, concerning structural defects, obsolete equipment and lax administration. Only the former report was supplied with the citation ordering the county to show cause why the jail should not be closed, but, when the hearing came up, the county representatives were faced with the more detailed report which they claimed they were unprepared to rebut or explain. As a consequence of the hearing, the jail was ordered closed and the county sought to have the order annulled by the Appellate Division under Article 78 of the Civil Practice Act.

The Appellate Division remanded the case to the Commission for another hearing on the ground that a proper hearing in accord with the statute had not been held, the county having had no opportunity to dispute or refute the matters in the second report and having been misled into answering only the charges contained in the first report.[44] The Court of Appeals reversed, holding that the key to the sufficiency of the hearing was the question whether the Correction Commission was acting in a quasi-judicial or an administrative capacity.[45] The Court adopted the latter answer.

The theory of the opinion is that counties are mere political subdivisions

41. *Supra*, note 37.
42. Sanger v. Greene, 269 N.Y. 33, 41, 198 N.E. 622, 625 (1935).
43. N. Y. CORRECTION LAW §46(8).
44. Cayuga County v. McHugh, 3 A.D.2d 300, 160 N.Y.S.2d 473 (4th Dep't 1957).
45. Cayuga County v. McHugh, 4 N.Y.2d 609, 176 N.Y.S.2d 643 (1958).