Appeal of Anthony P. Schultz, a Professional Employe, from a decision of the Board of School Directors of the Lower Merion School District, Montgomery County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 195

OPINION

David H. Kurtzman
Secretary of Education

Anthony P. Schultz, Appellant herein, has appealed from a decision of the Board of School Directors of the Lower Merion School District, Montgomery County, Pennsylvania, terminating his contract and dismissing him as a professional employe.

FINDINGS OF FACT

1. Appellant was employed by the Lower Merion School District as a secondary teacher under a professional employe contract dated October 6, 1969.
2. The said Appellant was the holder of a provisional certificate issued by the Pennsylvania Department of Education, dated February 28, 1951.
3. The said provisional certificate expired in June, 1970.
4. During the said period, the Appellant failed to earn any post baccalaureate credits, as required for permanent certification.
5. By reason of the termination of the provisional certification period, and the failure of the Appellant to secure permanent certification, the Lower Merion School Board terminated his employment.
6. A hearing on the said termination of employment was held by the School District on September 16, 1970 and on September 21, 1970, the School Board confirmed the discharge.
7. On October 21, 1970, the Appellant filed his appeal from the discharge with the Secretary of Education.
8. A hearing on said appeal was held on November 24, 1970.

TESTIMONY

At the hearing held before the School Board on September 16, 1970, the testimony presented was substantially as follows:

Dr. Donald R. Van Wagenen, Superintendent of the Lower Merion School District, stated that on September 3, 1970 he had sent a letter to Mr. Schultz advising him of the termination of his contract because of the failure to earn the six required credits, and that no extension of his present certificate would be requested. The provisional certificate expired in June, 1970; that the Appellant did not qualify for permanent certification and had failed to earn any additional college credits during his term of employment. He had discussed the requirements with Mr. Schultz on several occasions. On September 2, 1970, at a conference with Mr. Schultz, reference was made to the three credits earned at Penn State, and further mention was made of the courses he had taken in the Air Force Schools. In his conversation with Dr. Wisor of the State Department of Education, he was advised that the courses taken by the Appellant did not meet the requirements. On September 3, 1970, in two conversations with Mr. Schultz, he advised him that he did not have a valid teaching certificate and therefore his employment in the District could not continue.

Jeannette S. Barnes, Executive Secretary of the School District, testified that on May 27, 1970 she had advised the Appellant, by letter, that his provisional certificate would expire in June of 1970 and he must apply for a renewal or permanent certification by submitting proof of six earned credits, as required. When Mr. Schultz submitted his credit records, she told him they would be sent to Harrisburg for evaluation. By letter of June 24, 1970, she notified him that his credits were not acceptable to the State Department of Education.

William R. Handforth, Director of Personnel for the School Board, stated that he had called Mr. Schultz in June, 1970 and made mention of the nonqualification of his credits and Mr. Schultz advised him that he was going to Harrisburg. At the meeting on September 3, 1970 with Mr. Schultz and the Superintendent, the Appellant was told that he would not be able to teach because of his noncertification.

Anthony P. Schultz, the Appellant, testified about his college credits and his Air Force Schools courses. He had graduated from Penn State in 1951, earning a B.S. in Education; that he had taken nine credit graduate courses at Penn State during his undergraduate years.

At the hearing on the appeal, held on November 24, 1970, he further testified that he taught at Millville, Pennsylvania from January, 1951 to June, 1951 and then rejoined the Air Force, serving therein until September, 1963. He had been advised by the Pennsylvania Department of Education that he needed six post graduate credits for permanent certification. He began teaching at Lower Merion School District in September, 1967 and in 1969 he received his tenure with a professional employe contract. On May 27, 1970, he received the letter from Mrs. Barnes (hereinbefore mentioned) and on June 24, 1970 he received a letter stating that he needed the six credits. On June 29, 1970, he registered for a three credit course at Penn State and completed the course. He acknowledged that he submitted his records to the Department of Education on October 13, 1970 and received their reply on November 18, 1970. He admitted that he had read his provisional certificate.

DISCUSSION

This case involves a teacher who was employed under a provisional certificate. At the expiration of the three year term thereof, his contract and his employment were terminated for failure to fulfill the requirements for permanent certification.

This is not the usual proceeding wherein the teacher is discharged for cause as provided in Section 1122 of the Public School Code. Where a discharge results from the expiration of certification, the teacher's completion of the requirements for permanent certification qualifies him for employment in any school district.

The regulations of the State Board of Education permit the issuance of a provisional certificate for a three year term. During that period the holder is required to secure at least one-half of post baccalaureate college credits required for permanent certification. Compliance therewith enables the teacher to secure a three year extension of the provisional certificate, subject to satisfactory teaching during the preceding three years, as certified by the local superintendent of schools. When the teacher has obtained all the post baccalaureate college credits required by the State Board regulations, he is entitled to a permanent certificate. Teachers who fail to comply, as above stated, lose their provisional status and are not eligible to continue teaching in the public school system.

In the instant case, the Appellant casts blame upon the local Superintendent for failure to advise him of the aforesaid requirements. We cannot accept this as a valid excuse for his complacency. The State Board regulations place the responsibility for fulfillment of requirements upon the holder of the provisional certificate. When the Appellant was asked whether he had read the provisional certificate, he admitted that he had. Said certificate states, inter alia, as follows: "and is authorized to teach for three years in any public secondary school of this Commonwealth." We therefore assume that he was aware of the three year limitation, and understood its import. On May 27, 1970, he was advised by letter that his provisional certificate was expiring. Said letter also stated the requirements for permanent certification. On September 3, 1970, he was advised by letter from the superintendent of his noncompliance. The Appellant, on October 13, 1970, submitted to the State Bureau of Faculty and Student Services his school records of the additional credits he had earned in a junior college and in the Air Force Schools. On November 18, 1970, he was advised that these were not acceptable for his permanent certification. On June 29, 1970, he enrolled at Penn State University and took a three credit

course. He had been put on notice of his status by the School District in May, 1970. He had until the opening of school in September, 1970 to attain permanent certification. Six credits were required. He finally secured three credits. His failure of compliance with the requirements caused the termination of his provisional certificate and the resultant loss of qualification to teach in the public school system.

The Appellant has raised the question of his tenure by reason of satisfactory teaching during the preceding three years. Attention is called to the provisions of Section 1101 of the Public School Code wherein a professional employe is defined. Said section makes specific reference to "certification."

The Appellant also makes reference to his employment contract with the School District. It is to be noted that said contract was made between the School District and a professional employe. When the provisional certification of the teacher expired, and permanent certification was not validated, his professional status terminated and the contract accordingly became null and void.

In **Christy v. Neville Township School District, 87 Pitts. 346,** the Court held:

> "It is quite clear that the plaintiff himself had made it impossible for the school board of Neville Township to permit him to teach at the beginning of the school year in the fall of 1938. By failing to qualify himself for the profession of teaching and by his failure to obtain a permanent teacher's certificate, the plaintiff had made it impossible for himself to comply with his contract of teaching in the school district of Neville Township.
>
> When a provisional certificate expires and is not renewed or made permanent, the person holding such a certificate immediately ceases to be a teacher and, therefore, ceases to remain within the definition of 'professional employee', and within the provisions of the teachers' tenure act."

In **Coble v. Metal Township School District, 178 Pa. Superior 301,** at page 307, the Court said:

> "By the enactment of the Teachers' Tenure Act the legislature did not intend to confer any special privileges or immunities upon professional employes, or grant them any rights beyond those reasonably necessary to effect the general purposes of the law. Houtz Appeal, 361 Pa. 537, 543, 65 A. 2d 420. Moreover, in construing the Tenure Act, it must be assumed that the legislature did not intend a result which is absurd or unreasonable, and that the legislature intends to favor the public interests as against any private interest. Swick v. Tarentum Borough School District, supra, 141 Pa. Superior Ct. 246, 251, 14 A. 2d 898."

In **Jacobs v. School District of Wilkes-Barre Township, 355 Pa. 449,** the Court, in its opinion, stated that the purpose of the Teachers' Tenure Act of 1937 was to secure the greatest educational opportunities possible for the children of the Commonwealth by assuring capable and competent teachers security of employment, thus tending toward a more efficient performance of their duties of instruction.

In view of the foregoing, it is our conclusion that the Appellant lost his professional employe status when his provisional certificate expired and, accordingly, any tenure rights also expired therewith.

We therefore, make the following

ORDER

AND NOW, to wit, this 5th day of March, 1971, the Appeal of Anthony P. Schultz from the discharge decision of the Board of School Directors of the Lower Merion School District is hereby dismissed.

* * *

Appeal of C. Alan Rowe, a Professional Employe, from a decision of the Board of School Directors of the Rose Tree Media School District, Delaware County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 196

OPINION

David H. Kurtzman
Secretary of Education

C. Alan Rowe, Appellant herein, has appealed from a decision of the Board of School Directors of the Rose Tree Media School District, Delaware County, Pennsylvania, terminating his contract and dismissing him as a professional employe.

FINDINGS OF FACT

1. Appellant has been employed by the Rose Tree Media School District as a professional employe since September of 1961.
2. On June 26, 1969, the School Board approved a sabbatical leave for the Appellant for graduate study and health reasons during the 1969-70 school year.
3. The Appellant failed to return to his teaching assignments beginning with the school year 1970-71.
4. On September 25, 1970, the School Board advised the Appellant of a recommendation for his dismissal on the basis of persistent and wilful violation of the School Laws of the Commonwealth.
5. A hearing on said discharge was originally scheduled for October 8, 1970 and by agreement of the parties was finally held on November 24, 1970.
6. On December 17, 1970, the Board of School Directors of the Rose Tree Media School District voted to dismiss the Appellant.
7. On January 18, 1971, the Appellant filed a Petition of Appeal with the Secretary of Education.

TESTIMONY

At the hearing held on November 24, 1970, before the Board of School Directors, the testimony presented was substantially as follows:

Henry F. Hofmann, Assistant Superintendent for Instruction, testified that he was advised by the Appellant of his request for a four class day or five classes with no duties, pursuant to a letter dated August 26, 1970. On August 28, 1970, by letter of the same date, the request was denied. The teacher failed to appear for his teaching duties when school opened. On September 10, 1970, he advised Mr. Rowe of his suspension for failure to attend his classes and, further, that a recommendation of dismissal, together with a legal action to recover the salary, would be made to the School Board. This letter was never answered by Mr. Rowe.

Louis W. Scott, the Principal, stated that Mr. Rowe had discussed with him the possibility of a reduced teaching load, and Mr. Scott advised him to make the request in writing to the