

18-1025

No. 18-_____

In the
Supreme Court of the United States

FILED

JAN 29 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

LILLIE LEON,

Petitioner,

v.

NEW YORK CITY DEPARTEMENT OF EDUCATION
and PAULA CUNNINGHAM, IN HER INDIVIDUAL
AND OFFICIAL CAPACITY,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

LILLIE LEON

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JANUARY 28, 2019

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QUESTION PRESENTED

Petitioner testified and submitted evidence during a 3-day 3020-a hearing, wherein the Arbitrator, Felice Busto rejected material evidence from Petitioner, such as A-41, A-43, A-48-49, A-77, A-78, A-91-92. The Arbitrator made factual errors, in favor of the DOE, the decision was rendered outside of the normal deadline. The decision has prevented revelation of material facts through this doctrine of collateral estoppel.

THE QUESTION PRESENTED IS

If the Arbitrator's decision was rendered unlawfully will this limit the scope of the preclusive effect of Res Judicata and Collateral Estoppel per this Court's decision in *Hall Street Assoc., LLC v. Mattel Inc.*, 552 U.S. 576 (2008)?

PARTIES TO THE PROCEEDINGS

PETITIONER AND PLAINTIFF – APPELLANT BELOW

- Lillie Leon

RESPONDENTS AND DEFENDANTS – APPELLEES

- Paula Cunningham

RESPONDENTS AND DEFENDANTS-APPELLEES WHO HAVE BEEN DISMISSED FROM THE CASE AND NO LONGER HAVE AN INTEREST IN THE OUTCOME OF THIS PETITION

- Nerida Urban
- Harvey Katz, State of New York,
NYC Department of Education

TABLE OF CONTENTS

| | Page |
|--|------|
| QUESTION PRESENTED | i |
| PARTIES TO THE PROCEEDINGS | ii |
| TABLE OF AUTHORITIES | iv |
| OPINIONS BELOW | 1 |
| JURISDICTION..... | 1 |
| STATEMENT OF THE CASE..... | 1 |
| REASONS FOR GRANTING THE PETITION..... | 3 |
| CONCLUSION..... | 5 |

APPENDIX TABLE OF CONTENTS

| | |
|--|-----|
| Opinion of the Second Circuit (October 31, 2018) | 1a |
| Opinion of the District Court (September 19, 2017)..... | 4a |
| Opinion of the District Court (April 29, 2014) | 24a |

TABLE OF AUTHORITIES

Page

CASES

| | |
|--|---|
| <i>Hall Street Assoc., LLC v. Mattel Inc.</i> , 552 U.S. 576 (2008) | i |
|--|---|

STATUTES

| | |
|---------------------------|---|
| 28 U.S.C. § 1254(1) | 1 |
|---------------------------|---|



OPINIONS BELOW

Judge William Kuntz, United States District Court, Eastern District of New York Motion for Summary Judgement, Granted, September 29, 2017 ECF No. 82 and close the case, case number 10cv2725. (App.4a)

Judge Robert Katzmann United States Court of Appeals, 2nd Circuit Ordered, Adjudged, and Decreed that the judgement of the district Affirmed, October 31, 2018 Document 69-1 2422316 pages 1-3 case number 17-3567. (App.1a)



JURISDICTION

The opinion of the Second Circuit was entered on October 31, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1).



STATEMENT OF THE CASE

Petitioner, Lillie Leon, was a 80 years of age, at the onset of this case, currently she is 87. Petitioner began her teaching career with the Department of Education of New York City, N.Y. In 1978, as a substitute teacher.

In October 1982, Petitioner became a tenured teacher at P.S. 40, Q, in Jamaica, N.Y. Concurrently, she became a bonafide member of the United Federation of Teachers. Contractually, Petitioner was entitled to the same benefits as all other tenured teachers. This Contract Agreement between the U.F.T and D.O.E. is binding, and enforceable for all members of the collective bargaining agreement. The contract has always been a city-wide Contract for all New York City elementary Public Schools. At P.S. 40 Petitioner taught Pre-kindergarten successfully for the last 8 consecutive years of her teaching employment at this school in accordance with her high level of seniority in that school. Also, Petitioner successfully taught grades Pre-kindergarten through 6th grade at P.S. 40, Q. Petitioner has an Early Childhood license, which is a requirement for all teachers of Pre-kindergarten classes. In September 2001, when Petitioner was involuntarily transferred to P.S. 117, Q, in Briarwood, N.Y., there was no Pre-kindergarten class in the school. Petitioner was given her requested first choice Kindergarten Class grade assignment for 6 consecutive years, based on her seniority in P.S. 117, Q.

In June of 2007, one Pre-kindergarten class was implemented into P.S. 117, Q, and was initially given to a younger teacher without having posted the position. Petitioner grieved the non-posting of the Pre-kindergarten class. Thereafter, the Pre-kindergarten class assignment was assigned to Petitioner, in accordance with her higher level of seniority at P.S. 117, Q. As an experienced Pre-kindergarten teacher, Petitioner noticed non-compliance issues with the proper administration of the Pre-kindergarten class in terms of mandatory state guidelines, preparation

for the new Pre-K class, insofar as a clean, healthy, safe room environment is concerned. In addition, the classroom was not equipped with the required materials. After numerous unanswered request were made to the administrative staff at P.S. 117, Q, for the required state improvements to be made prior to the official first day of school, in March of 2008, a written complaint was filed with the appropriate school official. A-77.

In June of 2008, Petitioner received her first U rating and the administration began a system of rotating this one grade class assignment, effectively freezing Petitioner from her contractual entitlement to the Pre-kindergarten class assignment because they did not believe it was fair for Petitioner to keep the teaching assignment in perpetuity. A-155, A-157.

Insubordination and misconduct are perceived by Petitioner to be pretext issues.

Petitioner attended a 3020-a hearing and the arbitrator made a decision to terminate her career on July 14, 2011.



REASONS FOR GRANTING THE PETITION

1. Petitioner wishes that this court will carefully examine her claim and grant Writ of Certiorari, for Petitioner to challenge the charges of gross insubordination and misconduct which lead to her termination. The DOE failed to show proof of their compliance with the terms of the collective bargaining agreement. However, the DOE has invoked the doctrines of Res

Judicata and Collateral Estoppel. This has prevented subsequent tribunals, from deliberating over the material facts, prima facie evidence, the underscore issues.

2. Judge William Kuntz of the Eastern District, rejected all evidence, as allegations, instead of material facts that support Petitioner's claim non-compliance with contract. Judge Kuntz did not show an official record of Lillie Leon a Pro se Litigant, of ever having been made aware of the consequences of Summary Judgment. Judge Kuntz, departed from the normal court procedures after Petitioner filed opposition to summary judgment, on time as a Pro se Litigant, January 6, 2017, A-15-16, A-18, A-96, A-97, A-102 judicial review denied 17-90019-jm/Judicial Council

3. Petitioner, Lillie Leon has not retired, due to the defamation of of her character and teaching career. Through this court, she seeks to reclaim her reputation/dignity, and over 30 years of unblemished pristine teaching professional performance history. The outcome of this case will have a ripple effect for elderly teachers in similar situations, where tribunals have upheld unlawful acts in favor of administrators using the collateral estoppel to suppress opposing material facts/evidence in future cases.



CONCLUSION

For the aforementioned reasons, the Petitioner prays that this Court will grant a Petition for Writ of Certiorari for the preservation of due process under the law.

Respectfully submitted,

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JANUARY 29, 2019