

No.
20 - 6241
IN THE

Supreme Court of the United States

Lisa Marie Smith Petitioner

v.

School District of Philadelphia Kelly Services Inc. Respondent(s)

ORIGINAL

On Petition For Writ of Certiorari

FILED
OCT 05 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

To The United States Court of Appeals of the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Lisa Smith, Pro Se Litigant
6219 Palethrop Street
Philadelphia Pa, 19120
215-457-5802

QUESTION(S) PRESENTED

- (1) Whether work place policies made up by Kelly Services should overrule state and federal school laws.
- (2) Whether The School District of Philadelphia is exempt from from liability for negligence, retaliation, discrimination, and harassment against a third party not employed by them, but a third party is assigned to work in a school of The School District of Philadelphia under the direct supervision of the Principal and other supervisory officials of the school.

Under... (42 U.S.C § 1983 Title VII of the Civil Rights Act. 42 U. S. C § 200e et seq).
The Pennsylvania Human Relations, 43 P. S § 951 et seq Philadelphia Fair Practice Ordinance

Phila code § 9-1101

LIST OF PARTIES AND RELATED CASES

The United States District Court Eastern Pennsylvania

Honorable Wendy Bettlestone

Seyfarth Shaw LLP

Eric J. Janson Esquire, Lead Attorney
975 F. Street, N.W.
Washington DC 2004
(202)828 3532-

Wilson Elser Moskowitz Edelman & Dicker LLP **601 Walnut St # 1130E, Philadelphia, PA 19106**

Karen M. Gottlieb, Esquire
Michael S. Takacs, Esquire
(215) 627 6900

Potter, DeAgostino, O' Dea & Cark

207 Cambridge Ct. # 223, Auburn Hill MI 48326
Steven Potter, Esquire
Rick J. Patterson, Esquire
(248) 377 1700

Third Circuit Court of Appeals Judges

Honorable Patty Schwartz

Honorable Luis Felipe

Honorable Richard Lowell Nygaard

Honorable Theodore Megee

Honorable Peter J. Phipps

Lisa Smith vs. School District of Philadelphia Kelly Services Inc. Civil Action No. 17-3600/ No 19-1399 Appellate Court

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

20 U.S.C. § 6736(a) of the Edward Coverdell act of 2001 Protects Teachers from liability when using reasonable force to maintain order, discipline, and safety in the classroom

18 Pa.C.S. § 1317 Authority of Teachers and Principals

The District Court, and The Appellate Court wrongfully based their opinions and decisions on laws govern by **42 U.S.C § 1983 Title VII of the Civil Rights Act. 42 U. S. C § 200e et seq. The Pennsylvania Human Relations, 43 P. S § 951 et seq Philadelphia Fair Practice Ordinance Phila code § 9-1101.**

14th Amendment Protects teachers from discrimination at Public Schools.

First Amendment protects teachers from protected activity, retaliation that result in illegal workplace polices, wrongful termination and freedom of speech publicly and privately in Public Schools.

JURISDICTION

Pursuant to **28 U.S.C. § 1331**, the District Court had jurisdiction over this action brought by the Petitioner Lisa Marie Smith for violations of **42 U.S.C § 1981** and **Title VII of the Civil rights Act of 1964**, as amended, **42 U.S.C § 200e et seq** (“**Title VII**”). Pursuant to **28 U.S.C § 1337**, the District Court also had supplemental jurisdiction over the Petitioners' claims for violations of the Pennsylvania Human Relations Act, **43 PS § 951 et seq** (“**PHRA**”), and the Philadelphia Fair Practices Ordinance, **Chapter 9-1100** of the Philadelphia Code as amended (“**PFPO**”). On February 15, 2019 the Petitioner timely filed a notice of appeal to the third circuit court of appeals from a final decision from the United States District Court for the Eastern District of Pennsylvania which dismissed the Petitioners claims in its entirety.

This appeal is from the From March 19th 2020 pursuant to Third Circuit Court of appeals **LAR 34.1 (a)**. The Third Circuit Court of Appeals had jurisdiction of this over this appeal pursuant to **28 U.S.C § 1291** because it is an appeal from a final decision of which affirmed The District Courts decision.

STATEMENT OF THE CASE

Petitioner, Lisa Smith has devoted her life to childhood education, and has been employed with the School District of Philadelphia for over twenty (20) years as a Substitute Teacher when the opportunity presented itself for Kelly Services Inc., to employ Petitioner as a Substitute teacher Petitioner readily accepted in 2016. The children at the Cayuga Elementary school would regularly run in and out of the classrooms, up and down the halls, in a dangerous manner the Principal, Jason Carrion warned students and teachers this created a significant safety risk. Petitioner, Ms. Smith , also alleges that, in addition to the disruptive behavior, she was frequently confronted with racist language from her students, she was called a Monkey, black bitch and the word nigger was frequently used in front of her by her mostly Hispanic students. Ms. Smith reported the harassment multiple times in early February 2017, including on February 3, 2017. On February 7, 2017 4 days later, Kelly Services' Compliance Manager called Ms. Smith to inform her that Kelly Services intended to dismiss her from her employment.

PRETEXT

The Compliance and Operations Manager for Kelly Services stated to Ms. Smith that Ms. Smith had busted the lip of a child. Ms. Smith was not allowed to see the statements written by the students that accused her of causing injury to this student before her termination, even though another Compliance and Operations Manager, Brooke Huss acknowledged to Ms. Smith that the statements received from her students conflicted with each other.

Finally, The Department of Human Services (DHS) determined that the report of child abuse was **unfounded**. Nevertheless , Respondent still refuse to reinstate the Petitioner or even apologize.

The Petitioner filed a complaint with the EEOC, the EEOC granted the Petitioner a right to sue letter, the Petitioner sued the respondents for racial discrimination, retaliation, and harassment, protected activity. In the United States District Court, the respondents filed a motion for summary judgment, the District granted the motion. The Petitioner filed a timely appeal to Third Third Circuit Court of Appeals

and filed a motion for counsel, the motion was denied by the Motions Panel. The appeals court affirmed the decision of the District Court. The Petitioner filed a motion for a rehearing, the request for a rehearing was denied on May 28, 2019.

REASONS FOR GRANTING THE PETITION

On February 7, 2017 the Petitioner was wrongfully terminated from her employment because her employer instituted a “no touch policy” that is not in compliance with Pennsylvania state law. The Petitioner was also subjected to racial bantering , and retaliation in the work place, from the students she taught. She believes that the employees at the Cayuga Elementary School, a school of the School District of Philadelphia where she was assigned routinely ignored her complaints of student harassment and racial bantering should be held liable for their negligence and racial discrimination. For this reason her rights were violated under the 1st and 14th Amendments and Pennsylvania school codes and federal laws that protects teachers when maintaining safety and order in their classrooms.

While the Petitioner does not grasp the escape of any liability of the School District of Philadelphia and its employees and respondent, Kelly Services Inc. The District Court, and The Appellate Court wrongfully based their opinions and decisions on laws govern by 42 U.S.C § 1983 Title VII of the Civil Rights Act. 42 U. S. C § 200e et seq. The Pennsylvania Human Relations, 43 P. S § 951 et seq Philadelphia Fair Practice Ordinance Phila code § 9-1101. When they concluded that (1.) The School District of Philadelphia was not liable for her claims because it was not the Petitioners' employer. This is erroneous because the School District of Philadelphia and its Principals have an obligation to ensure that anyone working in their schools including third parties are not the victims of harassment, retaliation, and discrimination by staff and students whether they are employed by the respondent or not. See School District Handbook p.24 (Appendix D). The Principal and Lead Disciplinarian of the school had an obligation to hear the Petitioners' complaints and develop a remedy to end the repeated racial tension the Petitioner endured while assigned to this school by her employer Kelly Services.

Instead, the Principal retaliated against the Petitioner when he went to Kelly Services and falsely accused her of busting the lip of a student without looking at the student physically for any injuries. In addition, the negligent behavior of a School Counselor who evaded the issues and took no action when the Petitioner called him to a classroom to address an issue of a student calling her a “Black Bitch and Monkey” instead, he blamed the Petitioner when he told her “**I was not there, this is all you, and its your word against a student**”. A Lead Disciplinarian who failed to discipline the students that caused racial tension and a hostile and unfriendly work environment for the Petitioner. Furthermore, the Lead disciplinarian created an unsafe classroom environment when she brought two at risk students to the class and leaving when she was assigned to work closely with the Petitioner due to the disturbing element of disruption by the students of this school. The Lead Disciplinarian informed the Petitioner she would return in five minutes, and never returned.

(2.) The District and the Appellate court concluded that “**Smith argues that she was fired for reporting racial harassment by students, Such reporting would be “protected activity,” as the District Court noted , Kelly Services could not have fired Smith because she reported student behavior if it did not know that she had made such reports.**” This is erroneous because the Petitioner also argued her termination of Kelly's no touch policy was illegal according to state and federal laws. The Courts purposely upheld and dodged this issue. The Petitioner also argued that Kelly Services went on a report and authority of the school Principal that the Petitioner busted the lip of a student as a result, the Petitioner was terminated from her employment. After the report of abuse was UNFOUNDED(see Appendix F) by The Department of Human Services Kelly Services dissembled, and shifted their reasoning for terminating the Petitioner to **an illegal no touch policy**. The District Court and the Appellate court erroneously decided in favor of respondent, Kelly Services .

The emphasis here is the District Court and the Appellate Court abandon this issue of an illegal no touch policy and instead decided Petitioner “did not tell her employer, and she was not employed by The School District of Philadelphia.”

The Petitioner has also held Kelly Services liable for imposing an illegal no touch policy and wrongfully terminating her.

The petitioner cited school law to the District and Appellate court when she argued that she took the proper action when reporting racial bantering and harassment by her mostly Hispanic students to the **governing authorities** and the proper school officials See 18 Pa.C.S. § 1317 Authority of teachers, vice principals, and principals over pupils. Every teacher, vice principals, in the public schools teachers **shall have the right to exercise the same authority as to conduct and behavior over the pupils attending his school**, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or person in parental relation to such pupils may exercise over them. According to this Pennsylvania state law the actions by the Petitioner when she reported student behavior to the above school staff instead of Kelly Services was sufficient given that Kelly Services is not a governing authority over students and it admitted in their motion for summary judgment they do not handle school student discipline (p.10) they stated **“Moreover, Kelly could not have taken any corrective action against the students involved, as they do not have any corrective action against the students involved, as they do not have any responsibility for student discipline. That is the province of the SDOP.”**

For the above reason the District and Appellate courts' decision to free the School District of Philadelphia of any liability was erroneous. Next, The District Court and the Appellate Court's Decision to free Kelly services of any liability was also erroneous because it ignored and dodged state and federal laws that protect teachers from **illegal policies as Kelly Services no touch policy.**

As emphasized by the Petitioner, this policy is not only illegal, but it illegally bypass state and federal laws, it puts teachers in a very unsafe position restricting them from defending themselves against violent students who may attack them, prevents teachers from taking control his/her classrooms e.g. removing disruptive students from classroom when necessary which is permitted by law, student fights, and physical bullying are areas when teachers are needed to intervene physically if no immediate assistance within the school is available. Pennsylvania law permits the reasonable use of force when it is necessary to quell a disturbance that threatens physical injury to a child or others See 23 Pa. C.S. § 6304(f). In *Ingraham Vs. Wright* 430 U. S. 651(1977) the Supreme Court emphasized to Vice Principals and Principals in this case of corporal punishment to use “prudence and restraint when disciplining students.” In this case before this court the Petitioner used reasonable force when she grabbed her student by his shirt to get him in line at dismissal, and to quell the disturbance this student was causing when he ran in out of the classroom, refusing to line up with the other students, yelling profanity at the Petitioner, addressing the Petitioner as a “Stinking as Bitch and I'm gonna get my mother to kick your ass.” The use of corporal punishment is forbidden in the state of Pennsylvania. The Petitioner was not out of compliance of Pennsylvania law, as no corporal punishment was issued.

Also, See 20 U.S.C. § 6736(a) of the Edward Coverdell act of 2001 a federal law that protects teachers from liability when teachers have to use reasonable force to maintain order, safety, and discipline in their classrooms. Accordingly, no company work place policies shall overrule federal and state laws company policies must be in accordance with state and federal laws for it to be a valid policy.