

NO.____

IN THE
SUPREME COURT OF THE UNITED STATES

SEAN DAVID DUCKETT, SR.

Petitioner,

v.

JEFFERSON PARISH DEPARTMENT
OF PUBLIC WORKS—STREETS
Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Louisiana

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Jefferson Parish's Personnel Rules of the Classified Service Rule X, which puts no requirement upon its Appointing Authorities to give any pre-deprivation notice whatever to classified employees facing termination, comports with the procedural due process provisions of the United States Constitution.

Whether, as a matter of law, a well-founded procedural due process claim under the United States Constitution may be denied and, in effect nullified, even after this Court's dictates in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 were fully briefed to the civil service board prior to the board rendering its decision.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sean David Duckett, Sr. (Duckett) respectfully requests the issuance of a writ of certiorari to review the judgment of the Supreme Court of Louisiana.

DECISIONS BELOW

The decision of the Supreme Court of Louisiana denying a writ of review is published as *Duckett v. Jefferson Par. Dep't of Pub. Works-Sts.*, No. 2021-C-01794 (La. Jan. 26, 2022). It is reproduced at Pet. App. 1a.

The decision of the Louisiana Fifth Circuit Court of Appeal is published as *Duckett v. Jefferson Par. Dep't of Pub. Works-Sts.*, No. 20-CA-452 (La. Ct. App. Nov. 3, 2021), and is reproduced at Pet. App. 1b.

JURISDICTION

The Louisiana Supreme Court denied Duckett's writ application on January 26, 2022. This timely filed application invokes the Court's jurisdiction under 28 U.S.C §1254.

FEDERAL CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment

Section 1: Citizenship and Civil Rights

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On March 6, 2019, Sean David Duckett Sr. (Duckett), a full-time permanent civil servant employed by Jefferson Parish (adjacent to New Orleans) was summoned to an unannounced meeting attended by his immediate and two successive supervisors, including the Director of the Jefferson Parish Department of Streets. For over an hour Duckett was subjected to a succession of detailed questions concerning his activities as Road Maintenance Superintendent extending over a period of months. Duckett repeatedly stated that he was unprepared to respond to the questions and that he needed to consult his records. A few days later Duckett received a termination notice from the Parish.

I. The Context of Duckett's Termination

Sean David Duckett Sr. (Duckett) began working for Jefferson Parish on October 26, 1996, as a laborer and rose through the ranks to the position of Road Maintenance Superintendent I. Nearing retirement, Duckett had received exemplary performance reviews, regular pay raises, and had managed to do this with almost no disciplinary action being taken against him.

This changed when Durrell Jones (Jones), an individual Duckett formerly supervised when working on the West Bank of Jefferson Parish, became his supervisor in June of 2018. In the space of just a few weeks Duckett was written up by Jones five times: August 15, 23, 29, 31 and September 18, 2018. After 25 years of service, Sean Duckett was terminated from his Civil Service job and retirement

benefits after being surprised at a meeting where he was accused of a wide variety of omissions and offenses.

II. The Meeting

On March 6, 2019, Jones asked Duckett to step into a conference room. When he was seated Duckett discovered that he was at a pre-deprivation disciplinary hearing where his continued employment as a civil servant was on the line: in the room were his direct supervisor Durrell Jones, his second level supervisor James Thompson, Director of Department of Streets Brook Burmaster, and human resources manager Jonas Perrioti.

At the meeting, which lasted an hour, Duckett found himself accused of an array of specific misconduct, most of which he had never been made aware of. He was required to respond, factually and

on the spot, to each accusation. He was repeatedly asked for documents to support his defenses. At several times during this hearing Duckett can be heard protesting that he needed time to collect documents and his logs to answer the specific allegations of misconduct which was brought against him. This was denied to him.¹ Of approximately 2400 lines in the forty-eight pages of transcribed testimony only about 550 lines are spoken by Duckett. Almost all the rest are the prepared arguments and further questions by the four others in the room.

During the final five minutes of the meeting the HR manager asked Duckett to agree to leading questions about turning in an altered doctor's note,

¹ Duckett had the audio recording of the pre-deprivation hearing transcribed. The transcript was introduced, without objection, as an exhibit and was presented to the Board as part of the Record. Excerpts of the pre-deprivation hearing are found in Appendix E.

which had never been brought to Duckett's attention and which had never been the basis for discipline. Scared, and unable to consult with counsel or even reflect, Duckett maintained that the note was legitimate. An investigation showed that the note was altered and a few days later Duckett received a termination letter from the Parish.

III. The Personnel Board

Duckett timely appealed his termination to the Jefferson Parish Personnel Board.² A one-day hearing was conducted by the Board's long-tenured Referee Theodore Nass on February 19, 2020. At the hearing the parties stipulated that Duckett's five write-ups would not be considered by the Referee, and that the decision would be confined to, and solely based upon, the single issue of the altered

² In other jurisdictions the Board would usually be referred to as a Civil Service Commission. It performs identical functions.

doctor's note.³ The Referee rendered judgment on March 2, 2020, concluding, on the issue of Duckett's doctor's note, that punishment was warranted but that the punishment was excessive. The Referee ordered, among other things, that Duckett be demoted to Road Maintenance foreman and that he be ordered back to work on March 9, 2020.

Although the evidence of Duckett's lack of pre-deprivation notice was presented at the hearing, the Referee's Order ignored it and Duckett was tacitly denied due process relief by the hearing officer.⁴

Seeking Duckett's termination, the Appointing Authority obtained a permanent stay and appealed to the Jefferson Parish Personnel Board. Before making its decision, the Board was thoroughly briefed on the constitutional deprivation

³ Record, p. 173; Appeal Hearing Record, p. 104. This is undisputed.

⁴ Hearing Testimony Excerpt, Appendix F. pp. 4-7.

of Duckett's right to meaningful notice. Duckett specifically cited *Cleveland Bd. Of Education v. Loudermill*, 470 U.S. 532, 542 to the Board, where this Court stated:⁵

An essential principle of due process is that a deprivation of life, liberty, or property “be preceded by notice and opportunity for hearing appropriate to the nature of the case.” *Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950). We have described “the root requirement” of the Due Process Clause as being “that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.” *Emphasis supplied.*

Remote oral argument was had, ten minutes per side, at which no questions were raised by the three-person Board.

The Parish Personnel Board had been given both a written transcript and an audio recording of

⁵ Post Hearing Application to Personnel Board, Appendix D, pp. 2-8 and throughout.

the hearing at which Duckett was surprised. The Board had the opportunity of both hearing and reading Duckett say, “I wasn’t informed that I was going over the evaluation today. ...I was not informed of that we was having this evaluation meeting, so I don’t have any documentation stating or showing that I can prove or show for all of these low expectations that I have”.⁶

That Board, without comment, opinion, or without making any specific findings, or any finding at all, reversed the Referee on September 11, 2020, and ruled, simply, that termination was not an excessive punishment. Citing the provisions of the Parish’s Personnel Rules of the Classified Service, the Board then terminated Duckett.

⁶ Transcript of Deprivation Hearing, p. 3 of 48. Appendix E.

IV. Louisiana Fifth Circuit Court of Appeal

Duckett timely appealed to the Louisiana Fifth Circuit on September 21, 2020. Oral argument was not conducted until October 14, 2021. No questions were forthcoming from the judicial panel at the virtual hearing. Judgment affirming the Board was rendered almost immediately, on November 3, 2021.

The Louisiana Fifth Circuit Court of Appeal in effect deflected, and declined to adjudicate, Duckett's Constitutional issue, noting in its discussion of Duckett's first assignment of error, that "it was not adjudicated before Referee Nass during the hearing." It apparently made no difference to that court that the facts were indisputably presented to the hearing

officer and that hearing officer specifically allowed Duckett to brief the issue.⁷

V. The Supreme Court of Louisiana

The Louisiana Supreme Court denied Duckett's writ application without comment.⁸

⁷ Louisiana Fifth Circuit Opinion, Appendix B, pp. 20-21. The Fifth Circuit, oddly, indicated that a separate Jefferson Parish Rule, stemming from the Jefferson Parish Administrative Management Policies (JPAMP) 502, section 5 does indeed mandate specific pre-hearing notice in writing whenever possible. What is otherwise inexplicable is why the apparent violation of JPAMP, with its Constitutional implications, was OK. See Appendix B, pp. 17-18.

⁸ Louisiana Supreme Court writ denied. Appendix A.

REASONS FOR GRANTING THE WRIT

The Courts Below Ignored The Loudermill Requirements, Despite Being Briefed on Them

Prior to divesting Duckett of his Civil Service employment, the Parish Personnel Board was specifically briefed on the commands of this Court in *Cleveland Bd. of Education v. Loudermill* in the following words:

An essential principle of due process is that a deprivation of life, liberty or property “be preceded by notice and opportunity for hearing appropriate to the nature of the case. [Cite omitted.] We have described “the root requirement” of the Due Process Clause as being “that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.” 470 U.S. 532, 542.⁹

The unannounced matter for which Duckett was terminated came up only in the last five

⁹ See Appendix D, Sean Duckett Sr.’s Post-Hearing Application for Review, p. 8.

minutes of the hour-long hearing where Duckett was confronted, for the first time, with evidence of a false doctor's note. Duckett was unprepared, on the spur of the moment, to explain. After his termination, it came out in the appeal hearing that the note in question was for an instance where he took his mentally confused diabetic father from an automobile on the side of a busy street to a doctor, that his hostile supervisor had demanded that he return "with a doctor's note", and that he created the note to satisfy the unreasonable and unauthorized demands of his supervisor.

Duckett testified of his pre-deprivation hearing, that "...when they started about the note, I kept to my guns because I was scared....if I would [have] said anything, I was thinking I was going to get fired. But I was scared. I really was. But I

wouldn't do it again because I got too many years invested to lose".¹⁰

In *Mathews v. Eldridge*, 424 U.S. 319, 335 this Court found three factors to be relevant in determining what process is constitutionally due in pre-deprivation situations: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest.

Those three jurisprudential factors relevant lean heavily toward giving Duckett some actual notice prior to his hearing: (1) the private interest that will be affected by the official action was significant; Duckett lost his 25 year career and much of his retirement; (2) the risk of an erroneous

¹⁰ See Appendix F., Hearing Testimony Excerpt, p.10.

deprivation of such interest through the procedures used was high, since the civil service appointing authority was deprived of hearing Duckett's context for the doctor's note and Duckett himself was deprived of the opportunity to reflect and prepare for the questions about the doctor's note; and (3) the Government's interest, which in this case required no expedited resolution, and which included a clear governmental interest in retaining the services of a long-serving and qualified supervisor.

In *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532 (1985), this Court concluded that a public employee dismissible only for cause was entitled to a limited hearing prior to his termination, to be followed by a more comprehensive post-termination hearing. The Court held that the pretermination hearing "should be an initial check against mistaken decisions — essentially, a determination of whether

there are reasonable grounds to believe that the charges against the employee are true and support the proposed action," *id.*, at 545-546.

Importantly, this Court held that pretermination process "need only include oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity for the employee to tell his side of the story", *id.*, at 546.

Yet this is precisely what the facts of this case show were missing.

The rule of law used to adjudicate Duckett's case, Rule X of Jefferson Parish's Personnel Rules of the Classified Service, in effect abrogates the minimum requirements of *Loudermill*. There is no evidence in this record that the Appointing Authority were aware of, or employed any other standard that that enunciated in the Parish's Personnel Rules of the Classified Service.

The facts of this case overcome the jurisprudential restraints this Court has established when weighing the constitutionality of locally enacted rules and regulations.

Jefferson Parish's Personnel Rules are endowed with a presumption of legislative validity, and the burden is on Duckett to show that there is no rational connection between the Parish action and its conceded interest in providing its citizens with an efficient civil service. See *Harrah Independent School Dist. v. Martin*, 440 U.S. 194, 198-99 (1979).

Furthermore, this Court has stated that it is, and should be, extremely reluctant to breathe still further substantive content into the Due Process clause so as to strike down legislation adopted by a State or city to promote its welfare. Whenever the Judiciary does so, the Court has

stated, it "unavoidably pre-empts for itself another part of the governance of the country without express constitutional authority. *Moore v. East Cleveland*, 431 U.S. 494, 544 (1977).

For the reasons just discussed, pp. 17-19, Duckett has shown just that Jefferson Parish's Personnel should not be presumed to be legislatively valid..

The absence of a referenced bright-line rule enabled and assisted Duckett's Appointing Authority and successive judicial review to excuse the Constitutional absence of notice and base the outcome on Duckett's infirm testimony which was the product of impermissible surprise and coercion. There is no evidence whatever that the Appointing Authority knew of or was even aware of the existence of PJAMP Rule 5.6.2. It was never cited by

the Parish to the Personnel Board; the Personnel Board never referred to it.¹¹

What cannot be reasonably disputed is that the Personnel Board and successive levels of judicial review ignored overwhelming evidence and repeated argument that Sean Duckett's termination was constitutionally infirm.

Because the lower courts and tribunals have consistently ignored both the letter and the spirit of the procedural due process protections of the Fourteenth Amendment, this Court's review is warranted.

The Court Should Grant Certiorari to Clarify the Application of Pre-deprivation Procedural Due Process Guarantees to Civil Service Commissions Throughout the Nation.

¹¹ This is not surprising because doing so would be to have admitted that the Parish violated its own (Constitutional) rule.

This Court should grant review in this case to provide guidance on the application of the due process clause of the Fourteenth Amendment to civil service commissions throughout the nation.

In the present case "notice in writing" concerning the sole alleged deficiency rating pertinent to this case is entirely absent: there is no written notice at all, much less any which specified "any particular misconduct", much less any "pertinent times, dates, places, amounts and names" as set forth in the cited jurisprudence. The only applicable document, set out by Jefferson Parish as constituting the Rules of the Classified Service, set up no such requirement for the Parish employer.

As it now stands, Jefferson Parish Personnel Rules of the Classified Service, Rule X, Disciplinary Actions, at section 1.2 simply require the appointing

authority to furnish to the employee a written statement of the reasons which the Parish had [post deprivation] for imposing discipline. This rule, as it stands, disregards this Court's longstanding jurisprudence; it's presence and use invites repeated factual scenarios such as the one presently at bar.

CONCLUSION

The facts of this case point to a recurring, yet flawed, judicial process at work in Louisiana's second most populous parish: Jefferson Parish's civil service rules, alone among all the civil service jurisdictions in Louisiana fail to require either pre-deprivation notice or detailed specifications of misconduct in advance of a hearing where a civil servant's protected property interest in employment is at stake.

Mr. Duckett respectfully requests that this
Court issue a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

No. ____

SEAN DUCKETT, SR.

Petitioner

v.

JEFFERSON PARISH DEPARTMENT
OF PUBLIC WORKS—STREETS

Respondent

As required by Supreme Court Rule 33. (h), I certify that the petition for a writ of certiorari contains **3,376** words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 13, 2022

Dale E. Williams

CERTIFICATE OF SERVICE

I certify that I have mailed via First Class U.S. mail, postage prepaid, three copies of the foregoing to the following:

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Covington, LA this _____ day of April 2022

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