

25 - 6918
No.

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Ikia Butler,

Petitioner,

vs.

Merit Systems Protection Board,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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I. Questions Presented

Where an agency refuses to remunerate an employee for work done for no apparent reason, is that tantamount to slavery under the Thirteenth Amendment?

Where an agency violates its own employment policy by refusing to reinstate an employee to his/her former position without reason, is that action covered under 5 CFR 1201?

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III. TABLE OF AUTHORITIES

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Statutes

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5 CFR 1201.3 (a) (9): Jurisdiction of respondent (Suitability Actions)

5 CFR § 731.203 (a): Cancellation of Reinstatement Eligibility qualifies as a Suitability Action

5 CFR § 731.501 (a): Prerogative to sue after Suitability Action

5 CFR § 731.202 (a): Obligation to make all Suitability Actions based on factors provided by 5 CFR § 731.202 (b), Page 6

5 CFR § 731.202 (b): Only Factors for Suitability Actions

5 CFR 731.105 (c): Agency Obligation to make all Suitability Actions based on factors provided by 5 CFR § 731.202 (b)

5 CFR 731.105 (e): Agency may not take Suitability Actions against an Employee

5 CFR § 302.108: Fitness Determinations of employees in the excepted service are subject to Part 731

Constitutional Provisions

United States Constitution, Amendment XII

III. Petition for Writ of Certiorari

Ikia Butler, an employee of the United States Postal Service and a pro se litigant, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

IV. Opinion Below

The decision by the United States Court of Appeals for the Federal Circuit, affirming the decision of the Respondent in this case, is numbered 2025-1204.

V. Jurisdiction

Miss Butler invokes this Court's jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Federal Circuit's judgment.

VI. Constitutional Provision Involved

United States Constitution, Amendment XIII

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

VII. Statement of the Case

This case presents new horizons regarding matters that have not been legally tested before this Court.

Background

Miss Butler was a full-time City Carrier, a career position with the United States Postal Service (USPS). After 12 years and 3 months of active service, she resigned on 21st September 2020. Her resignation was primarily due to domestic violence and the need to care for her mentally ill son. The issue of domestic violence was deleterious to the point of physical abuse by Miss Butler's ex-husband on the USPS property. The aforementioned situation triggered her transfer from Philadelphia, Pennsylvania, to Charlotte, North Carolina. It was duly documented in USPS records. The Petitioner's son also developed a mental illness, which required the full care and attention of a single parent.

Miss Butler applied to be re-employed by the USPS as a City Carrier Assistant and began her orientation on September 15, 2021, where she took all requisite examinations. Upon liaising with her Union Representative, one Sylvin Stevens, it was established that she was eligible to be reinstated to her previous position by the stipulations of the USPS EL-312 Employment and Placement Handbook 2021. Subsequently, she was advised to apply for reinstatement to her former position by completing a form. The application resulted in a suitability screening with her Human Resource Manager, one Doris Reed. After the suitability screening, the Human Resource Manager concluded that Miss Butler would not be reinstated and would have to continue as a non-career employee for two years, in order to be reinstated to her former career position. The Human Resource Manager, on behalf of the USPS, made this determination without reference to any reason, policy, or statute/legislation and at its discretion. The Human Resource Manager aforesaid further disregarded a policy-based challenge by Miss Butler. In

addition, the USPS withheld her remuneration for multiple periods of work, despite appeals from Miss Butler. She therefore inevitably petitioned the Merit Systems Protection Board.

Merit Systems Protection Board Decision

The Administrative Judge concurred with the arguments contained in a Motion to Dismiss for lack of jurisdiction filed by the USPS. The decision limited the scope of the subject matter to 'adverse actions' under **5 CFR 1201.3 (a) (1)** (explicated by **5 USC § 7512**). It ultimately held that the facts of the circumstances were not 'adverse actions', thereby declaring that the Merit Systems Board did not have jurisdiction over it. Secondly, the Administrative Judge considered whether **USC § 8151** and **5 CFR § 353** applied to the facts and held that they did not. The aforesaid decision was made on 23rd September 2024.

On Direct Appeal

On direct appeal, the United States Court of Appeals for the Federal Circuit first made a questionable decision on 21st February 2024. On motion, it substituted the United States Postal Service with the Merits Systems Protection Board as the Respondent. The United States Postal Service was then made an Intervenor. The Court claimed that the decision was made pursuant to 5 U.S. Code § 7703(a)(2). According to the Court, 5 U.S. Code § 7703(a)(2) provided that the Merit Systems Protection Board ("the Respondent") was to be designated as respondent where the Board's decision concerns its procedure or jurisdiction, which can be found nowhere in the aforementioned statute.

The aforesaid decision was made despite Miss Butler's argument that 5 U.S. Code § 7703(a)(2) provided that the Merit Systems Protection Board was not to be designated as respondent where the employee sought review of a final order. Whereafter, she provided evidence to the effect that the Merit Systems Protection

Board itself had declared that the decision in question was its final decision. In its final order dated 23rd September 2024, it stated – “This is the Final Order of the Board concerning the withdrawal of the appellant’s petition for review. The Initial Decision of the Administrative Judge is the Board’s final decision in this case. The date of this final order should be used for purposes of appeal rights set forth below”.

On the substantive matter, Miss Butler argued that the Respondent had jurisdiction over the subject matter, by the provisions and stipulations of 5 CFR 1201.3 (a) (9), which cover suitability actions. Furthermore, 5 CFR § 731.203 (a), which evidently defines ‘suitability actions’, qualifies ‘cancellation of reinstatement eligibility’ as so, under 5 CFR § 731.203 (a) (3). In application to the facts, Miss Butler’s reinstatement eligibility was guaranteed under the relevant employment policies of the USPS. These are the stipulations of Regulations 233.33 to 233.34 of the USPS EL-312 Employment and Placement Handbook 2021. Moreover, the United States Postal Service conducted a suitability assessment pursuant to the aforementioned policy, where it subsequently cancelled the Petitioner’s eligibility for reinstatement. It was further determined that Miss Butler would only be reinstated to her former career position after serving for two years in her non-career position. In essence, the United States Postal Service added insult to injury by taking an ‘ultra vires’ action. This was indeed done, at the complete suitability of the Intervenor, without credence to policy, statute/ legislation; nor was a proper explanation given as to the basis for this determination.

Miss Butler buttressed her argument by asserting that 5 CFR § 731.501 (a) provides that when an agency acting under delegated authority takes a suitability action against a person, that person may appeal the action to the Respondent. She additionally argued that the USPS failed to substantiate the cancellation of her reinstatement eligibility based on the specified factors as required by 5 CFR § 731.202 (a) and 5 CFR § 731.202 (b). The

aforementioned submission is cemented by 5 CFR 731.105 (c), which allows an agency exercising delegated authority to take suitability actions against an applicant based only on the factors highlighted in 5 CFR § 731.202 (b). It was her final argument that 5 CFR 731.105 (e) holds that an agency may not take a suitability action against an employee. Wherein, the cancellation of an employee's reinstatement eligibility and the requisite factors to substantiate its determination are consequently and indubitably 'sine non qua'.

As to precedent, Miss Butler argued that the Respondent had jurisdiction by law, rules and regulations *Maddox v Merit Systems Protection Board* 759 F.2d 9, 10 (Fed. Cir. 1985), there was preponderance that the Respondent had jurisdiction see 5 C.F.R. § 1201.56(b)(2)(i) and it was a non-frivolous allegation of Respondent jurisdiction *Smime v Dept. of the Army*, 115 M.S.P.R. 51, ¶ 8(2010). The Respondent, therefore, failed to adhere to the provisions 5 USC § 7701 (c)(2)(1), which compel agency decisions not to be sustained where it is so proven that there was harmful error in application of the agency's procedures in arriving at such a decision and the decision was not in accordance with law.

The United States Court of Appeals for the Federal Circuit affirmed the Respondent's decision. According to the Court, Miss Butler did not raise the argument of a suitability action before the Respondent, and so it was waived. *Bosley v. Merit Sys. Prot. Bd.*, 162 F.3d 665, 668 (Fed. Cir. 1998). Even if not waived, Miss Butler could not cast the USPS's refusal to reinstate her to her previous position as a suitability action to fall within the Respondent's jurisdiction. It was the Court's position that the Respondent has jurisdiction over suitability actions where an agency takes action against a competitive service or career Senior Executive Service employee resulting from certain negative suitability determinations. Which Miss Butler was not. As a postal service employee, Miss Butler was in the excepted service, not the competitive service or Senior Executive Service.

See *Mouton-Miller v. Merit Sys. Prot.Bd.*, 985 F.3d 864, 867 (Fed. Cir. 2021).

The Court also held that no evidence showed Miss Butler was eligible for reinstatement to her previous position or that such eligibility was cancelled. It further supported its determination by stating that the portions of EL-312 that Miss Butler relied on, however, did not require USPS to reinstate her to her previous seniority or give the respondent jurisdiction to review USPS' decision. Instead, EL-312 states "[t]he Postal Service may fill a career position by reinstatement," but it does not require USPS to reinstate her or grant the Board jurisdiction to review USPS' decision not to reinstate her to her prior seniority. See EL-312, § 233.331.

The Court did not consider Miss Butler's submission as to the refusal of the USPS to remunerate her for three months. Which she duly proved with pay certifications. It did not comment whatsoever.

VIII. Reasons for granting the writ.

- A. To avoid the institutionalisation of slavery or involuntary servitude, via the refusal to remunerate an employee without cause. Essentially, the endorsement of free labor.

Over 115 years ago, *Bailey v. Alabama*, 219 U.S. 219 (1911) held that, "The language of the Thirteenth Amendment was not new. It reproduced the historic words of the Ordinance of 1787 for the Government of the Northwest Territory, and gave them unrestricted application within the United States and all places subject to their jurisdiction. While the immediate concern was with African slavery, the Amendment was not limited to that. It was a charter of universal civil freedom for all persons, of whatever race, color, or estate, under the flag. The words involuntary servitude have a "larger meaning than slavery". It was very

well understood that, in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded if only the word 'slavery' had been used". Id. At 240/241.

The aforesaid words of this court confirmed that slavery or involuntary servitude had a broader meaning in relation to the Thirteenth Amendment. It encompasses all situations where the universal civil freedoms of all persons under the flag are breached by the practice of free labor.

In this case, the US Appeals Court for the Federal Circuit did not consider this issue. Though it was pleaded as a relief in Miss Butler's brief (Para 1, Page 12) and pleaded in her petition to the respondent. It is, however, a fact that the United States Postal Service has to this day refused to remunerate her to the tune of \$3,618.71 for work done (to this day) for 3 months (200.50 hours). That is, for no apparent reason.

The Court would therefore be justiciable in reviewing the matter, as it is one which potentially institutionalises the fact that an agency may choose to engage citizens of this country in free labor without legal repercussions. It would therefore be a dangerous action to crystallise.

B. To avoid the deprivation of the reinstatement eligibility (12 years and 3 months) duly earned by dedicated service to a United States governmental agency. Essentially, the Court must protect the employment rights guaranteed to a citizen. Lest it festers and extends to other citizens.

The US Appeals Court erred in this matter. If a review is not conducted, the law would entrench the fact that an agency may choose to disregard rights earned through dedicated

service and hard work. If this matter is left unreviewed, it would be an indicator to the average citizen that dedicated service to our country is not worth the effort.

The Court would further be protecting a vulnerable citizen from the arbitrary decisions of a much bigger entity, which is a governmental agency.

This humble submission is supported by the fact that the US Appeals Court for the Federal Circuit erred in its decision and further disregarded a host of issues before it.

Firstly, Miss Butler submits that the case (*Bosley v. Merit Sys. Prot. Bd.*, 162 F.3d 665, 668 (Fed. Cir. 1998)) does not support its assertion that she did not raise the argument of a “suitability action” being taken against her before the respondent. The US Court of Appeals for the Federal Circuit, in this case, replaced the word “issue” with “argument”. *Bosley v. Merit Sys. Prot. Bd.*, 162 F.3d 665, 668 (Fed. Cir. 1998) ultimately established the fact that when an appellant has raised an issue before an administrative judge but not in a petition for review to the full Board, the issue is preserved for its review unless the appellant has knowingly abandoned or waived the issue; see *James v. Federal Energy Regulatory Commission*, 755 F.2d 154 (Fed. Cir. 1985) and *Lizut v. Department of the Army*, 717 F.2d 1391 (Fed. Cir. 1983). Miss Butler argues that she did indeed raise the issue before the respondent. In her petition to the respondent, she stated (Para. 2, Ln.11), “I am now just becoming aware of this board and the updated employment law. According to the EL-312 Employment Placement Handbook of June 2021, 233.23 to 233.35, I was supposed to be reinstated in 2021. I am requesting re-entry, reinstatement and restitution for the time loss from 9/15/2021 up to my career reinstatement date.” This statement was made after a voluminous description of the circumstances, wherein she described the

fact that the USPS refused to reinstate her. The issue was therefore raised as required by the aforesaid caselaw. They expressly provided for the raising of “issues” before the respondent and not “arguments”. The adjudicating officer of the respondent was an administrative judge who had a quasi-judicial role and not a judicial one.

Secondly, the US Appeals Court for the Federal Circuit erred in determining that the respondent only has jurisdiction over suitability actions where an agency takes action against a competitive service or career Senior Executive Service employee, resulting from certain negative suitability determinations. Wherein, Miss Butler was in the excepted service, and it therefore could not apply to her. This determination was flawed. It is conceded that Miss Butler was employed in the excepted service, but suitability actions are not limited to competitive service or career Senior Executive Service employees only. 5 CFR § 302.108 (a) provides that an agency must make fitness determinations for excepted service positions in accordance with the applicable requirements of part 731. This is further supplemented by the provisions of 5 CFR § 731.202 (a), which provides that an agency is responsible for making a fitness determination for an excepted service position covered by part 731 but must apply the specific factors in paragraph (b) as the minimum standards for making the determination. When applying these criteria, an agency must also apply guidance in supplemental issuances, as described in § 731.102(b). The US Appeals Court for the Federal Circuit was thus correct in establishing that Miss Butler was employed in the excepted service, but it was wrong in determining that suitability actions do not apply to them.

Finally, the US Appeals Court for the Federal Circuit made a grammatical error by determining that the USPS were not required to reinstate Miss Butler to her former position. It referred to the statement “ [t]he Postal Service may fill a

career position by reinstatement” at 233.331 of the USPS EL-312 Handbook”, in making this determination. The definition of the word “may” in this instance was utilised to “permit” the USPS to fill a career position by reinstatement. It is completely flawed to determine that the word “may” in this instance was one of “discretion”. It was used to grant permission rather than discretion. It is not a clause that grants the USPS the power to conduct a suitability fitness assessment (as it did in this case) and determine not to reinstate Miss Butler without a reason.

This case presents this Court with the opportunity to clarify the extent of the Thirteenth Amendment’s provisions, as well as determine new horizons regarding employment rights.

IX. CONCLUSION

For the foregoing reasons, Miss Butler requests that this Court issue a writ of certiorari to review the judgment of the US Court of Appeals for the Federal Circuit.

Respectfully submitted,

/s/ Ikia Butler

Ikia Butler