

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2001 Term

FILED

October 31, 2001
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 29066

JIMMY DALE ADKINS,
Petitioner Below, Appellee

v.

WEST VIRGINIA DEPARTMENT OF EDUCATION,
Respondent Below, Appellant

Appeal from the Circuit Court of Kanawha County
Honorable James C. Stucky, Judge
Civil Action No. 00-MISC-65

REVERSED

Submitted: September 18, 2001
Filed: October 31, 2001

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The Opinion of the Court was delivered PER CURIAM.
JUSTICES STARCHER and ALBRIGHT dissent and reserve the right to file dissenting opinions.
JUSTICE DAVIS concurs and reserves the right to file a concurring opinion.

SYLLABUS

“The ‘clearly wrong’ and the ‘arbitrary and capricious’ standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis.” Syllabus Point 3, *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996).

Per Curiam:

This case is before this Court upon appeal of a final order of the Circuit Court of Kanawha County entered on July 13, 2000. Pursuant to that order, the circuit court upheld a decision of the appellant and respondent below, the West Virginia Department of Education (hereinafter “Department of Education”), suspending the appellee and petitioner below, Jimmy Dale Adkins, a school teacher, for untruthfulness on a certification application. However, the circuit court found the two-year suspension imposed by the Department of Education to be arbitrary and capricious and an abuse of discretion, and thus, ordered that the suspension be reduced to one year. In this appeal, the Department of Education contends that the circuit court clearly erred by reducing the suspension.

This Court has before it the petition for appeal, the entire record, and the briefs and argument of counsel. For the reasons set forth below, the final order of the circuit court is reversed.

I.

Jimmy Dale Adkins began his teaching career in 1973. On July 11, 1977, while employed as an elementary school teacher in Clay County, Mr. Adkins was convicted of two counts of delivery of

cocaine, a felony, in the Circuit Court of Nicholas County. As a result of his convictions, Mr. Adkins lost his job and served one year in prison followed by five years of probation.

In 1983, Mr. Adkins decided to return to teaching and applied for a substitute teaching permit from the Department of Education. On his application, Mr. Adkins indicated that he had been convicted of a felony in this state. Without investigation, the Department of Education issued the certification. Soon after, Mr. Adkins was employed by the Braxton County Board of Education which was aware of his felony convictions.

In 1989, Mr. Adkins filed an application with the Department of Education for the conversion of his provisional professional teaching certificate to a professional teaching certificate valid for five years. On the application, Mr. Adkins answered “no” to the following question: “Have you ever been convicted of or are you currently under indictment for a felony?” His application was approved. On another certification application filed in 1994, Mr. Adkins again indicated that he had not been convicted of a felony. However, when Mr. Adkins sought a permanent teaching certificate in 1999, he correctly answered “yes” to the question regarding prior felony convictions. Upon receipt of this application, the Department of Education began an investigation and requested that Mr. Adkins provide documentation of his convictions.

Thereafter, the Department of Education discovered that Mr. Adkins was untruthful on the certification applications he filed in 1989 and 1994. It was also discovered that no investigation had

occurred when Mr. Adkins applied for a substitute teaching permit in 1983, even though at that time he was truthful about his prior convictions. On September 8, 1999, the Department of Education denied Mr. Adkins' application for a permanent teaching certification and further notified him that his teaching certificate would not be renewed for a period of at least two years after the date of his most recent application.

On September 24, 1999, Mr. Adkins requested a hearing regarding the non-renewal of his certification. Accordingly, a hearing was held before the Professional Practice Panel (hereinafter "Panel") of the Department of Education.¹ On December 15, 1999, the Panel issued its recommendation that Mr. Adkins' certification be suspended for a minimum of two years, beginning on the date of entry of the suspension order. On December 21, 1999, the Department of Education adopted the Panel's recommendation and ordered that Mr. Adkins' teaching certification be suspended for two years beginning on that date.

Mr. Adkins challenged his suspension by filing a petition for a writ of certiorari in the Circuit Court of Kanawha County. After briefing and oral argument, the circuit court entered an order upholding the Department of Education's finding that Mr. Adkins was intentionally untruthful on his 1989 and 1994 certification applications. However, the circuit court found that the two-year suspension imposed by the Department of Education was arbitrary and capricious and constituted an abuse of discretion.

¹Pursuant to 126 C.S.R. § 4-4.4 (1999), the State Superintendent of the Board of Education is authorized to appoint a Professional Practice Panel to hear and make recommendations to him regarding action against a teacher's license.

Consequently, the circuit court ordered that Mr. Adkins' suspension be reduced to a one-year period beginning on December 21, 1999 and ending on December 21, 2000. This appeal followed.²

II.

The sole issue in this case is whether the circuit court erred by reducing Mr. Adkins' two-year suspension imposed by the Department of Education to one year. As noted above, the record reflects that Mr. Adkins sought review of the Department of Education's decision by filing a petition for a writ of certiorari pursuant to W.Va. Code §§ 53-3-1 to -6 (1923). This Court has recognized that "school personnel may also seek review of school board actions by writ of certiorari in circuit court under West Virginia Code § 53-3-2 (1981 Replacement Vol.), which provides, in pertinent part, that certiorari lies 'in every case, matter or proceeding before a[n] ... inferior tribunal ... after a judgment or final order therein....'" *Board of Educ. of Lincoln County v. MacQueen*, 174 W.Va. 338, 340, 325 S.E.2d 355, 357 (1984). In *Beverlin v. Board of Educ. of Lewis County*, 158 W.Va. 1067, 216 S.E.2d 554 (1975), this Court "established that on a writ of certiorari the court may review the action of the lower tribunal to determine if it acted in an arbitrary and capricious manner, and if it did, its action will be

²On December 12, 2000, this Court stayed the circuit court's order pending disposition of this appeal.

reversed.” *North v. West Virginia Bd. of Regents*, 160 W.Va. 248, 260, 233 S.E.2d 411, 418-19 (1977).³

In this case, the circuit court determined that “the tribunal below was not arbitrary and capricious in regard to its finding that Jimmy D. Adkins’ 1989 and 1994 certification application forms were submitted by him with improper information and that such information was intentionally placed on the forms.” However, the circuit court went on to state in its final order that “the two-year suspension imposed by the State Department of Education in this matter is arbitrary and capricious and an abuse of discretion, in that the two-year suspension does not fit the misconduct demonstrated by the Department and the evidence set forth on the record by Mr. Adkins.” Accordingly, the circuit court reduced the suspension to one year.

This Court has advised that a circuit court may not reverse a decision of an administrative agency simply because it would have decided the case differently. *Berlow v. West Virginia Bd. of Medicine*, 193 W.Va. 666, 672, 458 S.E.2d 469, 475 (1995). As we explained in Syllabus Point 3 of *In re Queen*, 196 W.Va. 442, 473 S.E.2d 483 (1996), “the ‘clearly wrong’ and the ‘arbitrary and

³During oral argument before this Court, the circuit court’s review of this case was discussed in terms of the State Administrative Procedures Act, W.Va. Code §§ 29A-5-1 to -5 (1964). However, since this case was brought before the circuit court on a writ of certiorari pursuant to W.Va. Code § 53-3-1, we need not discuss the applicability of that Act. We note though that the standard of review under both statutes is essentially the same. *See* W.Va. Code § 29A-5-4(g) (1998). A similar standard of review is also employed when school personnel appeal a decision of the West Virginia Educational Employees Grievance Board under W.Va. Code § 18-29-7 (1985). *See* Syllabus Point 1, *Martin v. Randolph County Bd. of Educ.*, 195 W.Va. 297, 465 S.E.2d 399 (1995).

capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Thus, "[t]he scope of review under the arbitrary and capricious standard is narrow, and a court is not to substitute its judgment for that of the hearing examiner." *Martin v. Randolph County Bd. of Educ.*, 195 W.Va. 297, 304, 465 S.E.2d 399, 406 (1995).

Having reviewed the record in this case, we find that the circuit court erred in reducing Mr. Adkins' suspension from two years to one year. Pursuant to W.Va. Code § 18A-3-6 (1969),

The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for drunkenness, untruthfulness, immorality, or for any physical, mental or moral defect which would render him unfit for the proper performance of his duties as a teacher, or for any neglect of duty or refusal to perform the same, or for using fraudulent, unapproved, or insufficient credit, or for any other cause which would have justified the withholding of a certificate when the same was issued.

Likewise, 126 C.S.R. § 4-4.10.1 (1999) provides that "[t]he Superintendent shall have authority to revoke, suspend, or restrict the teaching certificate." In addition, the State Superintendent may make corrections with regard to errors in the certification process. W.Va. Code § 18A-3-6 further provides that "[i]f a certificate has been granted through an error, oversight, or misinformation, the state superintendent of schools shall have authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board of education."

The record in this case shows that the Department of Education's decision to suspend Mr. Adkins' certification for two years was based primarily on his untruthfulness regarding his felony convictions on his 1989 and 1994 certification applications. However, it is clear that the Department of Education also considered the fact that Mr. Adkins' felony convictions should have precluded his certification in the first instance in 1983. The Department of Education also noted that Mr. Adkins had continued to teach without certification but with the permission of the Braxton County school system after he was given notice that this certification would not be renewed. Finally, the Department of Education weighed in the fact that errors were made in discovering the inconsistent information Mr. Adkins provided. Given these facts and given the authority afforded the State Superintendent by W.Va. Code § 18A-3-6 and 126 C.S.R. § 4-4-10.1, the decision of the Department of Education cannot be characterized as arbitrary or capricious, nor does it constitute an abuse of discretion.

Accordingly, for the reasons set forth above, the final order of the Circuit Court of Kanawha County entered on July 13, 2000, is reversed, and the December 21, 1999 decision of the Department of Education suspending the teaching license of Mr. Adkins for two years is reinstated.

Reversed.