Understanding Article 78

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Overview

Article 78 encompasses three writs: mandamus, prohibition, and certiorari. A writ is a formal, legal written order or document issued by an administrative body or judicial jurisdiction. An Article 78 proceeding serves as a uniform device to challenge the activities of an administrative agency in court. It originated in 1937 as Article 78 of the Civil Practice Act, the CPLR's predecessor, to encompass the above mentioned 3 writs. By creating one proceeding to do the job of all three writs, the hope was to reduce the frequency of people accidentally doing the wrong writ.

Mandamus compels action and only applies to purely ministerial duties. Prohibition prevents body from overstepping its jurisdiction. The third writ, certiorari, reviews administrative determinations post hearing. Article 78 cases often straddle the line between these writs.

According to CPLR 7803, the following are the only applicable questions that should be raised in an Article 78 proceeding:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

These four questions found in the CPLR, relate back to the three writs. Question number one corresponds with the writ of

mandamus. Question two, prohibition and question four, certiorari. Question three covers the foggy areas between the three writs.

Exploring the Three Writs

Mandamus
CPLR 7803(1) poses the question of "whether the body or officer failed to perform a duty enjoined upon it by law." The function of the writ of mandamus is to compel the performance of a duty. This duty must be ministerial in nature, meaning no judgment or discretion is needed and no reasonable doubt or controversy is present. A Civil Service example of mandamus would be in the case that a petitioner takes an exam and can clearly show enough to leave no room for a contrary view that the answer he selected is as good as the one the respondents chose. The petitioner would be entitled to a mandamus direction. An Article 78 proceeding would serve to get a judgment that the petitioner's answer be accepted as correct and his exam re-graded accordingly.

Prohibition
The corresponding question from the CPLR for prohibition would be CPLR 7803(2): "whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction". Prohibition would not be against a strictly administrative action but instead against judicial or quasi-judicial actions. It must be related to need for jurisdiction where there is an act of power that is excessive. It Prohibition is a prerogative writ. For example, if a petitioner was a corporation and they could prove that being forced to go through a trial would constitute an undue burden on its interstate commerce, they would enlist prohibition.

Certiorari
CPLR 7803(4) covers the question relating to certiorari: "whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law

is, on the entire record, supported by substantial evidence". Certiorari results from a required judicial or quasi-judiciary evidentiary hearing and has the criterion of "substantial evidence". The purpose of this writ is to seek judicial review.

Mandamus-Certiorari Borderline
The writs of mandamus and certiorari can overlap in some instances and the distinction between the two is not always clear. CPLR 7803(3) covers this area with the question of "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed". When something is deemed "arbitrary and capricious" it means the action taken is unreasonable and without any regard to the facts. And "abuse of discretion" would be a decision made outside of the certain confines that encompass discretion and is another way of defining something that is "arbitrary and capricious". When the punishment doesn't fit the crime or is considered so disproportionate to the offence that it would be shocking to the court's sense of fairness, it would fall in this category.

How an Article 78 Works

In an Article 78 case, there are two parties, the petitioner and the respondent(s). The petitioner is the person who brings about the proceeding to fight against an administrative result. The respondent is the opposing party, the body or officer against which an Article 78 is brought.

An Article 78 case is usually held in Supreme Court unless it is against a judge of the Supreme Court or county court, in which case it would be moved to the Appellate Division. It can be tried in any county within the judicial district where the respondent made its determination.

Statute of Limitations

Article 78 cases have very short statutes of limitations (SOL), usually only four months or 120 days. There is some confusion as to when the four month time limit begins. Depending on which writ the case is pursuing, the SOL is either four months from the time when the determination is made or four months from the respondent's refusal to perform its duty after a demand has been duly made. Since people are often confused about the three writs, the best option is to pursue a possible Article 78 case as soon as possible to avoid overstepping the statute of limitations.

Judgment

The end result of an Article 78 is the judgment which will either grant the petitioner the relief to which he is entitled or dismiss the proceeding. In some cases monetary damages are rewarded but within narrow limits.

Relevant Case Synopses

The following are some representative cases that may be similar to the situation you are currently involved in. If you find yourself in a situation similar to one of these cases, please contact a lawyer immediately to discuss the possibility of starting an Article 78 appeal.

Article 78 case challenging a medical disqualification

Matter of Antonio Cardona v City of New York Civil Service Commission

Petitioner, Antonio Cardona, brought about this Article 78 proceeding to vacate his disqualification for appointment as a Police Officer with the New York City Police Department (NYPD).

Petitioner passed the written portion of the exam and was placed on the eligible list for a position as a police officer but then failed three pure tonal hearing tests and was subsequently disqualified. Petitioner filed an appeal and submitted two medical reports. Both doctors stated that they did not feel that Mr. Cardona's mild hearing loss in his left ear would interfere with his ability to perform the duties of a police officer. The Civil Service Commission reviewed this case and affirmed the NYPD's decision to disqualify Petitioner. Petitioner then filed this Article 78 appeal to review the determination.

Petitioner argued that the pure tonal hearing test administered by the NYPD was not rationally related to the duties of a police officer and that his disqualification violated New York Executive Law § 296, prohibiting discrimination against an applicant based on a disability.

The Court disagreed with Mr. Cardona's first argument and felt that the use of a pure tonal test was related to police officer functions in that is serves to set a hearing standard for applicants. In response to Petitioner's accusations of discrimination, the Court agreed. Since Petitioner did have a disability under Executive Law § 296, the NYPD needed to prove that his hearing loss would prevent him from performing in a reasonable matter. NYPD would need to conduct an individualized test and since they merely relied on the results of three pure tonal hearing tests, they only proved Petitioner suffered from a hearing disability, not that he was unable to perform the duties of a police officer. Plus the reports from Petitioner's two doctors and seven affidavits from current and retired NYPD officers all stated that he would be an effective Police Officer.

Accordingly, the Supreme Court granted petition and remanded this matter to the New York City Police Department to make an "individualized" determination consistent with Executive Law § 296.

Article 78 case challenging a termination

Matter of Adam R. Duchinsky v Nicholas Scoppetta, Fire Commissioner of the City of New York, and The City of New York

This Article 78 case was brought about by Petitioner, Adam Duchinsky to challenge his termination and seek reinstatement as a probationary firefighter with the Fire Department of the City of New York (FDNY). Petitioner was hired as a "provisional" EMS-EMT for the FDNY in 2006. Prior to being hired he disclosed that in 2000 he sustained an injury to his left knee and undergone arthroscopic surgery to repair the damage. In March 2007, Petitioner resigned from this position and became employed as a "probationary" firefighter. Again, Petitioner disclosed his previous injury and subsequent surgery.

Petitioner sustained an injury to his right knee during training in April of 2007, returned to work after a short medical leave but then was placed on light duty due to pain until mid-July. In August of 2007, Petitioner injured his left knee in another training exercise. This injury led to Petitioner's termination as a probationary firefighter less than a month later. Petitioner then submitted this Article 78 to review the termination under the "arbitrary and capricious" standard.

Prior to his termination date, on August 23, 2007, Petitioner's doctor, Dr. Levy, wrote a note that stated there was no reason that Petitioner couldn't perform his duties once his knee sprain healed, that his previous injury was in no way related to the more recent one, and that he should be able to "complete a full career if at least twenty years as a New York City firefighter". This doctor's note is significant because it included an MRI that showed "no problems" and the Bureau of Health Services doctor, Dr. Kelly, never mentioned this information in his determination that Petitioner was "medically unqualified to perform the duties of a probationary firefighter". Since Dr. Kelly relied heavily on the operative report for Petitioner's 2000 surgery performed by Dr. Levy, logically he should place equal value on the August 23 Doctor's Note.

Accordingly, the Supreme Court ordered Respondents to deliver to the court affidavits and other evidence to prove when the August 23 Doctor's

Note was received and whether and by whom it was considered prior to Petitioner's termination.

Article 78 cases involving disability benefits

Matter of Schmidt v Putnam County Office of the Sheriff

Petitioner Jeffrey Schmidt brought this Article 78 proceeding to review the Putnam County Sheriff's denial of disability benefits. The Supreme Court granted the petition and awarded the petitioner disability benefits.

Petitioner suffered an on-the-job fall on January 31, 2003 causing medial meniscal tears requiring subsequent surgical repair. In order to be eligible for disability benefits, a covered municipal employee must prove direct causal relationship between job duties and the resulting injury. Though the petitioner had a preexisting knee injury, the medical records unequivocally established that the injuries sustained were a result of his on-the-job fall and that these line-of-duty injuries were a direct cause of his disability.

Accordingly, the Putnam County Sheriff's denial was not rationally based on evidence presented and thus, the Court dismissed the denial as arbitrary and capricious.

Matter of Thomas Kempkes v Brian Downey

Petitioner, a police officer, brought about this Article 78 appeal to review a determination by the Chief of Police of the Village of Bronxville suspending petitioner without pay pending a disciplinary hearing. Petitioner argued that the Village was obligated to pay his disability benefits pursuant to General Municipal Law § 207-c since benefits conferred under this law constitute a vested property interest.

The issue in this case was whether General Municipal Law § 207-c creates a protected property interest in disability benefits such that a predeprivation hearing must be held. Since the constitutional guarantee of due process requires that a benefit recipient under General Municipal Law § 207-c be granted an evidentiary hearing prior to suspension of said benefits, a municipality may not discontinue the benefit payment without a prior evidentiary hearing.

Accordingly, the Supreme Court annulled the petitioner's suspension and ordered appellants to restore the disputed benefits to petitioner until an evidentiary hearing is held and a final determination of the disciplinary charges made.

Article 78 case involving reclassification of civil service job titles

Matter of Criscolo v Vagianelis

The Supreme Court of New York County granted petitioners' appeal to review a determination of respondent Department of Civil Service reclassifying certain civil service job titles.

Petitioners challenged the classification standards issued in October 2006 by respondents revising their job titles within the Department of Corrections. This reclassification would add a duty to conduct tier III inmate disciplinary hearings to the following job titles: education supervisor, plant superintendent, and assistant industrial superintendent. Petitioners contended that this reclassification was inappropriate and conflicted with the duties of their civil service titles. Supreme Court rejected these contentions and dismissed the petition resulting in this appeal by petitioners.

The Division argued that the job titles were in need of updating and that the standardized nature of the tier III hearings combined with procedural safeguards that are in place would allow for hearings to be conducted by non-attorneys. The proposed new standards set forth many changes and among them were requiring the employees to occasionally conduct tier III hearings.

The Division may not utilize reclassification as a means of validating out-of-title work and this appears to be the case. The Governor's Office of Employee Relations issued determinations in August 2006 ruling that the duties of conducting tier III disciplinary hearings constituted out-of-title work. The Division was attempting to indirectly do what it is prohibited from doing directly.

Accordingly, the Supreme Court ordered that the judgment is affirmed, without costs.

Article 78 case involving reimbursement for job related expenses

Matter of Timmerman v Board of Education of City School District of City of New York

In February 2007, Supreme Court ruled against Petitioner, Dolph Timmerman, in his Article 78 petition seeking to direct respondents to reimburse petitioner for the expenses he incurred defending himself against criminal charges leveled against him by two of his students.

Respondents contend that petitioner's criminal proceeding does not fall within the scope of Education Law 3028. Since the record shows that the criminal proceeding against petitioner clearly arose directly from the disciplinary actions he took against pupils, respondents should reimburse petitioner for the attorneys fees and expenses he accrued defending himself.

Accordingly, the Supreme Court ordered that the judgment is reversed, without costs, and the petition granted.

Article 78 case involving Alcoholic Beverage Control Law

Matter of Island Mermaid Restaurant Corporation v New York State Liquor Authority

Petitioner, Island Mermaid Restaurant Corp., brought about this Article 78 appeal to review determination of the New York State Liquor Authority which found petitioner to have violated Alcoholic Beverage Law 106(6).

The respondent alleged that petitioner permitted the licensed premises to become disorderly. One of the petitioner's employees verbally abused patrons and was involved in a physical altercation while ejecting these patrons from the premises. The petitioner argued that the evidence did not prove that licensee permitted the disorderly conduct. The incident was spontaneous and isolated and involved a nonmanagerial employee. No testimony was produced saying that the manager was aware that the incident was taking place nor was there any evidence that the employee involved had any history of any similar instances.

Accordingly, the Supreme Court granted the petition, with costs and annulled the determination.

Article 78 case involving a special use permit issuance

Matter of Woodland Community Association v Planning Board of Town of Shandaken

This article 78 appeal was brought against a judgment dismissing petitioners' application to review a determination of respondent Planning Board of the Town of Shandaken granting respondent Good Water Corporation's application for site plan approval and a special use permit.

In 2006, respondent Planning Board approved a special use permit to Good Water Corporation for the proposal to collect and haul away water to be sold for non-potable uses such as filling swimming pools. Petitioner, Woodland Community Association, in an article 78 proceeding sought to have the Planning Board's resolution annulled. The Supreme Court dismissed the petition which prompted this appeal by petitioners.

The Court agrees with petitioner's argument that the Planning Board lacked jurisdiction to determine the water collection was a special use permit. The Town Zoning Code only identifies "water bottling and related uses" as being relevant to a special use permit. Good Water's proposed use did not involve the bottling of water at any location. Only the Zoning Board of Appeals has the authority to interpret the Code's provisions and the Code expressly states that a special use not specifically listed is prohibited unless deemed a similar use by the ZBA. Thus, the Planning Board had no authority to approve Good Water's application for a special use permit.

Accordingly, the Supreme Court ordered the judgment reversed, without costs, petition granted, and matter remitted to respondent for further proceedings not inconsistent with Court's decision.