
EMPLOYMENT - NEW YORK

Schultz v. Town of Wheatfield

Supreme Court, Appellate Division, Fourth Department, New York - February 7, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 00827

Town employee who was allegedly demoted after his unsuccessful bid for public office brought action against town and chief constable, asserting claims for defamation, constructive discharge, and violation of his due process and First Amendment rights. The Supreme Court, Niagara County, granted in part and denied in part defendants' motion for partial summary judgment, and both parties appealed.

The Supreme Court, Appellate Division held that:

- Defendants had burden of eliminating fact issues as to whether they retaliated against employee, and
- Employee could not maintain First Amendment claim, absent viable common law defamation claim.

Even assuming, arguendo, that town and chief constable, in moving for summary judgment on town employee's claims for violation of due process and constructive discharge, established that employee was not demoted from the rank of sergeant after his unsuccessful bid for public office because no such position ever existed, they had burden of eliminating fact issues as to whether they retaliated against employee because of his political activities by eliminating his assignments and failing to schedule him for work, all without notice or a hearing.

Town employee who ran unsuccessful campaign for public office could not maintain First Amendment claim against town and chief constable based on chief constable's letter published during his campaign, which employee alleged was defamatory in nature and had chilling effect on his First Amendment right to engage in political activity, absent a viable common law defamation claim.

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