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PENSIONS - KENTUCKY

Puckett v. Lexington-Fayette Urban County Government

United States Court of Appeals, Sixth Circuit - August 15, 2016 - F.3d - 2016 WL 4269802

Retired county employees brought action against county, Commonwealth of Kentucky, and others, alleging that statutory amendment reducing cost of living adjustments (COLA) to their service retirement annuities violated Contract Clause, Due Process Clause, and Takings Clause of state and federal constitutions.

The United States District Court granted defendants' motions to dismiss and subsequently denied plaintiffs' motions to alter or amend judgment and for leave to amend complaint. Plaintiffs appealed.

The Court of Appeals held that:

- The court was without jurisdiction to consider the claims against the Commonwealth based on Eleventh Amendment sovereign immunity principles;
- The Ex parte Young doctrine was applicable to permit suit against individual state officers for the alleged violations of plaintiffs' federal constitutional rights;
- Addressing questions of first impression in the circuit, the legislature's statutory scheme for reducing the extent of future COLA increases to retired county workers did not constitute an unconstitutional impairment of contracts;
- Assuming arguendo that plaintiffs had a protected property interest, plaintiffs did not state a plausible procedural due process claim;
- Assuming arguendo that plaintiffs had a protected property interest, plaintiffs did not state a plausible substantive due process claim;
- Plaintiffs did not state a plausible Takings Clause claim; and
- Plaintiffs waived their argument that the district court erred when it denied their motion for leave to amend their complaint.

Based on Eleventh Amendment sovereign immunity principles, the Court of Appeals was without jurisdiction to consider claims brought by retired county employees against Commonwealth of Kentucky concerning reduced cost of living adjustments (COLA) to their service retirement annuities. Kentucky, which did not file an answer to employees' complaint, did not waive its immunity defense by raising that defense in its motion to dismiss, there was no question that Congress had not abrogated Kentucky's immunity for present purposes, and none of the exceptions to the doctrine of sovereign immunity applied.

In action brought by retired county employees against Commonwealth of Kentucky and various state officials concerning reduced cost of living adjustments (COLA) to employees' service retirement annuities, the doctrine set forth in Ex parte Young was applicable to permit suit against individual state officers pursuant to § 1983 for the alleged constitutional violations where the complaint alleged an ongoing violation of federal law and sought prospective relief.

Kentucky legislature's statutory scheme for reducing the extent of future cost of living adjustment (COLA) increases to retired county employees' service retirement annuities did not constitute an

unconstitutional impairment of contracts. Even assuming that the Police and Firefighters' Retirement and Benefit Fund Act created some contractual obligations, employees did not plead facts showing a clear intent on the part of the legislature to create contractual rights against the modification of a specific COLA formula, as employees pointed to no language within the Act, such as a provision giving them immutable lifetime entitlement to COLA increases, and nothing in the Act's legislative history, such as evidence that COLA formula was part of bargained-for exchange, indicating any expression of intent by the legislature to create a contractual right to the specific COLA formula in effect at the time they retired.

Assuming *arguendo* that retired county employees had a protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, employees did not state a plausible procedural due process claim in connection with Kentucky legislature's amendment of statute to reduce future COLAs. Although amendments to state's Police and Firefighters' Retirement and Benefit Fund Act were designated as emergency legislation, employees failed to allege any reason why the legislature's emergency designation was improper, or how that designation denied them any sort of "process" they were due.

Assuming *arguendo* that retired county employees had a protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, employees did not state a plausible substantive due process claim in connection with Kentucky legislature's amendment of statute to reduce future COLAs. When it amended the Act, the Kentucky General Assembly explained that its basis for doing so was to keep the Policemen's and Firefighters' Retirement Fund financially sound and resolve its financial difficulties, and employees' conclusory allegation, that there was "no rational connection between the amendments to the Act and any legitimate government interest," was nothing more than recitation of essential element of claim, insufficient to withstand motion to dismiss.

Where retired employees of Kentucky county had no protected property interest in the specific cost of living adjustment (COLA) formula for their service retirement annuities that was in effect at the time they retired, their claim under the Takings Clause necessarily also failed.

Plaintiffs waived their amendment claim on appeal where, although they requested reversal of the district court's denial of their motion to amend the complaint, they developed no argument in their brief.