

28 A.D.3d 553

Supreme Court, Appellate Division,
Second Department, New York.

In the Matter of Joseph
CLARK, appellant,
v.

TOWN BOARD OF TOWN
OF CLARKSTOWN,
etc., et al., respondents.

April 11, 2006.

Synopsis

Background: Retired policeman brought article 78 proceeding to review appointment made by Town Board for position of police chief. The Supreme Court, Rockland County, Sherwood, J., dismissed the petition. Policeman appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] retired policeman lacked standing, and

[2] retired policeman did not have common-law taxpayer standing.

Affirmed.

West Headnotes (4)

[1] Administrative Law and Procedure

🔑 Persons aggrieved or affected

To have standing to challenge an administrative decision a party must show that he or she will suffer a harm that is in some way different from that suffered by the public at large and that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the government agency has acted.

1 Cases that cite this headnote

[2] Public Employment

🔑 Election or appointment
Towns

🔑 Appointment or election, qualification, tenure, and removal of officers or employees

Retired policeman lacked standing to bring article 78 proceeding to review appointment made by Town Board for position of police chief since he suffered no injury as result of appointment; policeman was not an applicant for position of police chief and was not

eligible for become police chief. McKinney's CPLR 7801 et seq.

by persons having only the remotest legitimate interest in the matter.

Cases that cite this headnote

2 Cases that cite this headnote

[3] Towns

🔑 Rights and remedies of taxpayers

Retired policeman did not have common-law taxpayer standing to bring article 78 proceeding to review appointment made by Town Board for position of police chief; policeman did not challenge legality of any state or local legislative action, and there was no impenetrable barrier to judicial scrutiny since any persons on civil service eligibility list or police officer's union could have brought suit to challenge appointment.

2 Cases that cite this headnote

Attorneys and Law Firms

****644** Joseph Clark, Haverstraw, N.Y., appellant pro se.

Amy Wagner-Mele, West Nyack, N.Y. (Richard A. Glickel of counsel), for respondent Town Board of Town of Clarkstown.

Patricia Zugibe, New City, N.Y. (Jeffrey J. Fortunato of counsel), for respondent Patricia Prendergast as Commissioner of Personnel for County of Rockland.

ROBERT W. SCHMIDT, J.P.,
GABRIEL M. KRAUSMAN,
WILLIAM F. MASTRO, and
ROBERT J. LUNN, JJ.

Opinion

***553** In a proceeding pursuant to CPLR article 78, inter alia, to review an appointment made by the respondent Town Board of the Town of Clarkstown for the position of police chief, the petitioner appeals from (1) an order of the Supreme Court, Rockland County (Sherwood, J.), dated March 17, 2005, which granted the separate motions of the Town Board of the Town of

[4] Municipal Corporations

🔑 Nature and scope in general

Common-law taxpayer standing should not be applied to permit challenges to the determinations of local governmental officials having no appreciable public significance beyond the immediately affected parties,

Clarkstown and Patricia Prendergast as Commissioner of Personnel for the County of Rockland to dismiss the petition for lack of standing, and (2) a judgment of the same court entered April 5, 2005, which, upon the order, dismissed the petition.

ORDERED that the appeal from the order is dismissed, without costs or disbursements (*see* CPLR 5701[a][2], [b][1]); and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

[1] [2] The Supreme Court properly dismissed the proceeding on the ground that the petitioner lacked standing. The petitioner failed to show that “he or she will suffer a harm that is in some way different from that suffered by the public at large and that the alleged injury falls within the zone of interest sought to be promoted or protected by the statute under which the government agency has acted” (*Matter of Rediker v. Zoning Bd. of Appeals*, 280 A.D.2d 548, 549, 721 N.Y.S.2d 77, citing *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 772–774, 570 N.Y.S.2d 778, 573 N.E.2d 1034; *Matter of Long Is. Pine Barrens Socy. v. Town of Islip*, 261 A.D.2d 474, 475, 690 N.Y.S.2d 95). The petitioner, a retired policeman, was not an applicant for the position of police chief, nor was

he eligible to become the police chief. Accordingly, he failed *554 to show that he sustained any injury in fact as a result of the appointment of a new police chief, or as a result of the procedures used in the appointment.

[3] [4] The petitioner also does not qualify for “Common–Law Taxpayer Standing” (*Matter of Transactive Corp. v. New York State Dept. of Social Servs.*, 92 N.Y.2d 579, 589, 684 N.Y.S.2d 156, 706 N.E.2d 1180). First, the petitioner is not challenging the legality of any state or local legislative action (*id.* at 589, 684 N.Y.S.2d 156, 706 N.E.2d 1180). Rather, the petition seeks judicial review of the administrative determination resulting in the appointment of the new police chief. Second, and more importantly, no “impenetrable barrier” to judicial scrutiny exists (*id.* at 589, 684 N.Y.S.2d 156, 706 N.E.2d 1180). Any of the persons who were on the civil service eligibility list or the police officer's union could have brought suit to challenge the appointment by the Town Board of the Town of Clarkstown. Common-law taxpayer standing “should not be applied ... to permit challenges to the determinations of local governmental officials having no appreciable public significance beyond the immediately affected parties, by persons having only the remotest legitimate interest in the matter” (*Matter of Colella v. Board of Assessors of County of Nassau*, 95

N.Y.2d 401, 410–411, 718 N.Y.S.2d
268, 741 N.E.2d 113).

All Citations

The petitioner's remaining contentions
are without merit.

28 A.D.3d 553, 812 N.Y.S.2d 643, 2006
N.Y. Slip Op. 02754