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Gibson v. State, N.J.Super.A.D. 1976.

Superior Court of New Jersey, Appellate Division.

Richard P. GIBSON, Appellant,

v.

STATE of New Jersey et al., Respondents.

Submitted Oct. 25, 1976.

Decided Nov. 16, 1976.

Appeal was taken from a determination of the Civil Service Commission which rescinded appellant's appointment as city fire captain and ordered that an already expired eligibility list be revived for the purpose of making another appointment. The Superior Court, Appellate Division, held that the Civil Service Commission had not abused discretion when it rescinded appellant's appointment after determining that appellant's promotional examination score had been miscalculated.

Affirmed.

West Headnotes

[1] Municipal Corporations 268 ↪197

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(B) Municipal Departments and Officers Thereof

268k193 Fire

268k197 k. Appointment and Promotion of Firemen. **Most Cited Cases**

Where unsuccessful applicant for position of city fire captain alerted Civil Service Commission to fact that successful applicant's score on promotional exam had been miscalculated before eligibility list expired and also commenced civil suit on the date the eligibility list expired, fact that civil suit was dismissed for failure to exhaust administrative remedies did not prevent revival of expired eligibility list to resolve the dispute. N.J.S.A. 11:22-33.

[2] Officers and Public Employees 283 ↪11.4

283 Officers and Public Employees

283I Appointment, Qualification, and Tenure

283I(B) Appointment

283k11 Restrictions of Civil Service Laws or Rules

283k11.4 k. Eligible Lists, Certification, and Selection. **Most Cited Cases**

(Formerly 283k1.4)

Under statute which revives an otherwise expired civil service eligibility list for the purpose of resolving a dispute initiated before the expiration date of the list, such revival is mandated following favorable disposition of an administrative proceeding as well as of a court proceeding. N.J.S.A. 11:22-33.

[3] Officers and Public Employees 283 ↪11.4

283 Officers and Public Employees

283I Appointment, Qualification, and Tenure

283I(B) Appointment

283k11 Restrictions of Civil Service Laws or Rules

283k11.4 k. Eligible Lists, Certification, and Selection. **Most Cited Cases**

(Formerly 283k1.4)

Where dispute pertaining to civil service eligibility list is initiated before scheduled expiration of list, list does not expire during the pendency of the litigation but is extended for a period of time equal to the period during which such proceeding or litigation is pending. N.J.S.A. 11:22-33.

[4] Municipal Corporations 268 ↪197

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(B) Municipal Departments and Officers Thereof

268k193 Fire

268k197 k. Appointment and Promotion of Firemen. **Most Cited Cases**

Where unsuccessful applicant for position of city fire captain initiated controversy concerning alleged miscalculation of successful applicant's promotional examination score before eligibility list expired, list was revived in order to implement Civil Service Commission determination that error had occurred. N.J.S.A. 11:22-33.

[5] Municipal Corporations 268 ↪197

268 Municipal Corporations

268V Officers, Agents, and Employees

**268V(B) Municipal Departments and Officers
Thereof**

268k193 Fire

**268k197 k. Appointment and Promotion
of Firemen. Most Cited Cases**

Civil Service Commission did not abuse discretion when it rescinded an appointment to the position of city fire captain upon determining that the successful applicant's promotional examination score had been incorrectly calculated. N.J.S.A. 11:22-33; [Const.1947, Art. VII, § I, par. 2.](#)

****1181 *349** Fox & Fox, Newark, for appellant (David S. Litwin, Newark, on the brief).

***350** William F. Hyland, Atty. Gen., for respondent Civil Service Com'n (Erminie L. Conley, Deputy Atty. Gen., of counsel; Arnold Lakind, Deputy Atty. Gen., on the brief).

Bianchi & Colasanti, Nutley, for respondent Alfred L. Brand (Anthony T. Colasanti, Nutley, on the brief).

Before Judges BISCHOFF, MORGAN and COLLESTER.

***350 PER CURIAM.**

Appellant Richard P. Gibson and respondent Alfred L. Brand took a promotional examination, with others, for the position of fire captain in the Newark Fire Department. Following the examination and on July 4, 1972 Civil Service issued an eligible list, scheduled to expire on July 3, 1975, in which appellant ranked 40th with a score of 82.312, and Brand ranked 46th with a score of 81.765. Appellant was appointed to the position of fire captain on February 3, 1975 and his appointment was approved by the Chief Examiner and Secretary on February 28, 1975.

By letter dated July 1, 1975, two days before the list expired, Brand wrote to the Chief Examiner and Secretary alleging that appellant's final score on the examination had been incorrectly calculated. On July 3, 1975 he filed a complaint in the Superior Court, Law Division, challenging appellant's score, seeking appellant's removal from his rank as fire captain and his

own appointment to that position. This action was dismissed for Brand's failure to exhaust his administrative remedies.

Thereafter, the Director of Examinations in the Department of Civil Service determined that Brand's contention was correct: appellant's score had been incorrectly calculated and should have been 81.312 instead of 82.312, and he ordered that appellant's rank on the list be changed from the 40th position to the 52nd position, but determined that no further action would be taken. Brand appealed to the Civil Service Commission and joined appellant as a party thereto. Appellant takes this appeal from the determination of the Civil Service Commission from that the error in calculation ***351** of appellant's score was made and from its order that appellant's appointment be rescinded and the list revived for the purpose of making another appointment.

He contends that the challenged ruling constitutes a violation of the Commission's own rules and regulations. We disagree and affirm.

[\[1\]\[2\]\[3\]\[4\]](#) An otherwise expired eligible list is revived for the purpose of giving effect to the resolution of a dispute initiated before the expiration date of the list. N.J.S.A. 11:22-33; [Marranca v. Harbo, 41 N.J. 569, 573-74, 197 A.2d 865 \(1964\)](#). See also, N.J.S.A. 4:1-11.7(b), which authorizes the Commission to revive a list beyond its normal expiration date in the event of error 'which has unjustly denied any eligible of certification or appointment.' In this case Brand not only brought the miscalculation to the attention of the Commission ****1182** before July 3, 1975, the date on which the list was scheduled to expire, but started a civil suit as well. Dismissal of the civil suit on the ground that Brand had failed to exhaust his administrative remedies did not prevent revival in accordance with N.J.S.A. 11:22-33, as appellant contends; Brand's claim, initiated before expiration of the list, continued despite the dismissal of the law suit, albeit in an administrative context. N.J.S.A. 11:22-33 mandates revival following favorable disposition of an administrative proceeding as well as one in the courts. Hence, where the dispute, pertaining to the list, is initiated before the scheduled expiration of the list, the list does not expire during the

period of the pendency of the litigation but 'shall be extended * * * for a period of time equal to the period during which such Proceeding or litigation was pending.' (Emphasis supplied). Thus, Brand's timely action in initiating this controversy affecting the list before the expiration date thereof resulted in the list being revived in order to implement the decision favorable to him.

[5] The Chief Examiner and Secretary are authorized by rule to correct clerical errors during the life of an employment list, as revived in accordance with N.J.S.A. 11:22-~~352~~ 33, and it is for the Commission itself to determine whether the correction shall affect any prior appointment. N.J.A.C. 4:1-9.10. Hence, no rule was violated when the correction was made in the present matter, and the discretion vested in the Commission was not mistakenly exercised when it determined that appellant's prior appointment would be affected thereby. See, N.J.Const. (1947), Art. VII, s 1, 2; N.J.S.A. 11:21-3; [Volz v. Civil Service Comm'n](#), 86 N.J.Super. 268, 275, 206 A.2d 758 (App.Div.), certif. den. 44 N.J. 398, 209 A.2d 138 (1965); [Campbell v. Dept. of Civil Service](#), 39 N.J. 556, 562, 189 A.2d 712 (1963).

Affirmed.

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