

5 (2)

89-2084 JETT v. DALLAS INDEPENDENT SCHOOL DISTRICT

First ruling below (CA 5, 790 F2d 748, 41 BCP Cases 1074):

Although high school coach may have property interest in coaching salary, no written nor oral contract gave him property interest in intangible right of coaching; loss of coaching responsibility was not so intolerable that reasonable person would have felt compelled to resign and thus coach was not constructively discharged; it is uncertain whether issue of constructive discharge is factfinding subject to clearly erroneous rule or mixed question of law and fact; municipality may not be held liable under 42 USC 1983 on basis of negligent superior, but may be liable if constitutional violation was due to official policy or custom; jury findings do not establish that official policy-maker had knowledge that principal's recommendation to reassign coach was ill advised, and thus findings are insufficient to establish municipality's violation of Section 1983; imposition of respondent superior liability under 42 USC 1983 would be inconsistent with *Renell v. Department of Social Services of New York City*, 426 U.S. 458 (1975).

Second ruling below (CA 5, 837 F2d 1244, 46 FEP Cases 238):

Municipalities are not vicariously liable for violations of 42 USC 1981 and 42 USC 1983 of respondent superior as there is no reason to believe that respondent intended to impose such liability under Section 1983 when it did not do so under 42 USC 1983.

Questions presented: (1) Must public employee who claims job discrimination on basis of race show that discrimination resulted from official policy or custom in order to recover under 42 USC 1981? ~~See Good-Grass-Ed-Petter~~ (2) Is a finding of conscious indifference to possible racial discrimination an employee assignment case, promulgated by final decisionmaker in such circumstances, sufficient support imposition of municipal liability under 42 USC 1983? (3) Does public employee serving under employment contract possess property interest in tangible, non-economic benefits of job itself, or only in salary? (4) Is an act of constructive termination in suit under 42 USC 1981 and 1983 fact question for determination by jury, and, if so, did court of appeals err and abuse its appellate authority in this case by reversing jury finding of constructive termination, concluding "as matter of law" that reasonable person in respondent's circumstances would not have felt compelled to resign?

Petition for certiorari filed 6/21/88, by Frank Giletrap, Frank Hill, Shane Smith, and Hill, Beard, Omeal, Giletrap & Giers, all of Arlington, Texas.

89-214 CALLAS INDEPENDENT SCHOOL DISTRICT v. JETT

Filing below (CA 5, 790 F2d 748, modified 837 F2d 1244):

School superintendent's final evaluative authority to make discrete individual teacher transfer decisions would not appear, under *Pembaur v. Cincinnati*, 475 U.S. 149, 54 LM 4283 (1986), to subject school district to responsibility for superintendent's actions under 42 USC 1983 in case of particular transfer unless he also had final authority with respect to general district transfer policy applicable to teachers; question need not be answered, however, as trial court's jury instructions erroneously stated that city could be held liable for superintendent's teacher transfer decision only if (1) he was delegated policy-making authority or participated in well-settled custom that fairly represented official policy, and (2) actual or constructive knowledge of custom was attributable to governing body or official delegated policy-making authority; there was no evidence of wrongful intent on part of superintendent in making teacher transfer decision here, and thus there was insufficient evidence to hold school district liable under 42 USC 1983; city may not be held liable on basis of respondent superior under 42 USC 1983.

Questions presented: (1) Is Fifth Circuit's decision that Dallas Independent School District could be liable for damages under 42 USC 1981 and 1983 because of employee transfer decision made by non-policy-maker who is not following official policy or custom contrary to recent decision of City of St. Louis v. Probstnik, 56 LM 4201 (US Sup Ct 1988)? (2) Must public employee who claims job discrimination on basis of race and/or denial of equal protection because of non-responsible transfer decision by non-policy-maker show that discrimination resulted from official "policy or custom" in order to recover under either 42 USC 1981 and/or 1983?

Petition for certiorari filed 7/21/88, by David W. Townsend and Brown, Brown, Chandler & Townsend, both of Garland, Tex.

CERT. GRANTED: 11/7/88

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Limited to question 1.

Cases consolidated for one hour oral argument.

Cross References: Civil Rights
Education
Employment
Race Discrimination