

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17725 of 2016

Date of Decision: 02.09.2016

Bhogi Ram

... Petitioner

Versus

Punjab & Haryana High Court, Chandigarh
and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sanjeev Sharma, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The Haryana Subordinate Courts Establishment (Recruitment & General Conditions of Service) Rules, 1997 (abbreviated to “1997 Rules”) do not prescribe a uniform/ dress code for Clerks and Ahlmads working in Subordinate Courts in Haryana. This piece of information has been supplied to the petitioner by the Public Information Officer in the High Court on a request made in writing.

2. The District & Sessions Judge, Palwal issued a circular, which is impugned in this petition brought under Article 226/227 of our Constitution, vide office circular-notice dated October 09, 2014 asking all officials working in Sessions Division at Palwal to wear a white shirt and maroon tie at work for male officials and white colour suit and maroon dupatta for female officials. Employees were warned in case of violation of the order, strict action would be taken against the erring official. The

surprise check carried out in the afternoon at the Judicial Courts in Hodal falling in Sessions Division Palwal on January 29, 2015 discovered the petitioner, then posted as an Additional Ahlmad in the Court of the Civil Judge (Junior Division), flouting the dress code. He was not in white shirt and maroon tie as prescribed. He was called to submit his explanation for his act of disobedience, misconduct which was unbecoming of a Government servant. The reply was to be submitted in three days. He did not file reply within time allowed and instead dashed off a letter dated March 12, 2015 to the learned Civil Judge (Junior Division) Hodal explaining his position. He referred to the information received by him from the High Court under the RTI Act that there was no uniform or dress code for Clerk/Ahlmad in the Subordinate Courts in Haryana. The petitioner referred to the Haryana Government circular letter dated January 20, 2009 that where dress is prescribed their uniform/washing allowance has been granted to all Class-IV employees. He pleaded that he had not violated the rules and he be held not guilty of utter disobedience of the order prescribing the dress code. He attached the policy letter dated January 20, 2009 together with his explanation. This was not found satisfactory answer for breach of dress code.

3. He was accordingly issued a memorandum dated April 22, 2015 proposing to proceed against him under Rule 8 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 ("1987 Rules") read with Rule 12(2) of the 1997 Rules which prescribed procedure for inflicting minor punishment on the statement of allegations levelled against a delinquent appended in the charge docket as Annexure-II. He was offered

an opportunity to show cause as to why any of the minor punishments enumerated in Rule 4 of the 1987 Rules be not imposed on him. He was asked to submit his defence statement in writing within the time fixed. The allegations as stated earlier was that he had disobeyed the circular of the Sessions Judge on the dress code to be followed during working hours and on a surprise check was found flouting the order.

4. The Learned District & Sessions Judge, Palwal admitted that there were no specific instructions for Class-III officials of the Subordinate Courts regarding uniform or dress code but in order to maintain discipline on the administrative side, instructions were issued regarding wearing of uniform by the officials of the Sessions Division. It is also recorded by her that the Civil Judge (Junior Division), Hodal to which Court the petitioner was attached had recorded an ACR for the year 2014 and in the column of defects, that the petitioner was by nature 'rebellious'. He was offered personal hearing on May 26, 2015 by the Sessions Judge. He made a written response praying that he be provided the uniform mentioned in the letter dated October 09, 2014 or the market value for purchasing the same along with grant of washing allowance. He referred to the decision of the High Court regarding dress code for Bench Clerks with direction allowing purchase of dress material and for defraying stitching charges from the local tailoring market. He submitted that the Judicial Officers were also in receipt of robe allowance as per rules. What he meant was that he was being treated unequally.

5. Since the proposed punishment was minor in nature the procedure under Rule 8 was followed which did not contemplate regular

inquiry. The learned District & Sessions Judge, Palwal considered the reply and found it suitable to impose a penalty of withholding of one increment of pay without cumulative effect. The order was passed on July 01, 2015 and conveyed the next day to the petitioner. The punishment was inflicted by taking a lenient view of the lapse reverting to Rule 4 of the 1987 Rules read with Rule 12 (2) of the 1997 Rules and in terms of Rule 8 of the 1987 Rules.

6. The petitioner has approached this Court in the present petition against the circular-notice dated October 09, 2014 after the expiry of the currency of the penalty order dated July 01, 2015 and restoration of the annual increment but has not directly impugned the order of punishment. I would take it that he in fact prays for removing the base of the punishment order founded on the prescription of the dress code by questioning its legal validity as one without jurisdiction keeping in view his grounds of attack taken in the petition. Is the circular dated October 09, 2014 beyond the powers of a District Judge and therefore a nullity?

7. To support his case the learned counsel for the petitioner contends that the District & Sessions Judge, Palwal had no authority whatsoever to prescribe any dress code for the ministerial staff of the Judicial Courts, when there is no such provision in the 1997 Rules. The dress code could not be imposed without statutory or legislative sanction. It is further argued that there is no dress code prescribed by the High Court for Class-III employees (Ahlmads/Clerks) of Judicial Courts in the State of Haryana and therefore the District & Sessions Judge, Palwal has overstepped her authority without any backing by the High Court or rules of service, the petitioner being an employee of the State of Haryana and not the

High Court. The order imposing dress code is unlawful and illegal and infringes the petitioner's rights and freedoms guaranteed under Articles 14, 16, 19 and 21 of the Constitution of India. It is articulated during the oral hearing that the petitioner is not bound to obey an unlawful order and it is no offence to act in breach of an unlawful order. It follows, as urged by learned counsel, that sentence of punishment awarded to a ministerial employee for not following an unlawful order needs to be set aside. Reliance is placed strongly on para.16 of the decision of the Constitution Bench of the Supreme Court in Ajay Hasia and others v. Khalid Mujib Sehravardi and others, (1981) 1 SCC 722 and counsel insisted on reading the entire paragraph in Court which article of faith I readily allowed and I must speak on this as it would be unfair not to deal with the binding Supreme Court judgment which has a special place in the hallmarks of justice being an important case law on the subject resolutely followed in deciding cases in which the principles are involved. The Supreme Court observed in *Ajay Hasia* that unfortunately in the early stages of the evolution of our Constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that the Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfills the two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislation or executive action.

8. It was for the first time in E.P. Royappa v. State of Tamil Nadu,

(1974) 4 SCC 3 that the Supreme Court laid bare a new dimension of Article 14 and pointed out that the that article has highly activist magnitude and it embodies a guarantee against arbitrariness. Quoting from *Royappa* the learned counsel submits that equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 & 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. The law on the subject took a stride ahead in Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

9. He again quotes from precedent in famous authority; Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489 that the concept of reasonableness and non-arbitrariness pervades the entire Constitutional scheme and is golden thread which runs through the whole of the fabric of the Constitution. These standards set by the highest court of reasonableness and non-arbitrariness are singularly missing at the foundations of the Circular/Notice dated October 09, 2014 which is whimsical and capricious. Learned counsel contends also that an executive order cannot be passed without legislative backing imposing financial expense on the petitioner. He deserves to be left free to wear the dress of his choice since it does not affect his working.

10. Rather intriguingly, the prayer in this petition under the heading relief sought and claimed in para.18 is:-

“It is therefore, respectfully prayed that the present Civil Writ Petition Under Articles 226, 227 of Constitution of India praying for issuing a writ of certiorari writ or direction or order for quashing the order vide Endst. No.9401-12 dated 09-10-2014/0.4 (Annexure – P1) of District & Sessions Judge, Palwal being violative of Article 14, 16 and 21 of Constitution of India and the Hon'ble Supreme Court's in Ajay Hasia Vs. Khalid Mujib (1981) AIR 487, 1981 SCR(2) 79, RD Shetty Vs. International Airport Authority of India, Menaka Gandhi Vs. Union of India and E.P.Royyapa Vs. State of Tamilnadu.”

11. There is no prayer for quashing the penalty as noticed earlier but worth a repetition in order to understand what the petitioner wants. A writ of certiorari is sought for quashing the decision dated October 09, 2014 by which the District & Sessions Judge has prescribed a dress code for male and female employees of the Sessions Division. This writ goes to record. What record one might expect in the Office of the District & Sessions Judge while it translated an idea of maintaining administrative discipline by distinguishing court employees from the rest of the foot falls in the court premises to strike it down. The circular-notice is significant in keeping a vigilant eye on court employees and their movement during court working hours. That they do not mingle in the crowd. Even litigants, lawyers and laypersons and all the other stakeholders who have business in court, which is a public place, would stand benefitted by easy identification by the dress code. One may ask why maroon colour for a tie? What sort of arbitrary choice was this? Was it plain maroon or printed maroon tie in the impugned circular? Plain white shirt or white in self print? This would be endless nonsense and rigmarole. For one, lawyers in district courts usually wear solid black ties and white shirts. Therefore, black it could not be. Maroon

colour is the least flashy among the other colours. If the Learned Lady District Judge chose the maroon colour for male staff it was certainly not a bad choice. Each district court may well have its own traditions or to set up its own traditions for the future. The colour of the tie has no effect at all on the business of the court which is to dispense justice, because justice itself is colour blind. If the petitioner is a non-conformist he is free to practice his creed before and after court hours but he cannot disobey an order which is common to his class and make it a court issue. He should not have challenged the authority of the District Judge by wanton disobedience and instead have fallen in line, if better sense had prevailed, and taken up the issue he felt so strongly about by a seeking a reference to the Haryana Government through proper channel and to this Court on its administrative side to examine the innocuous issue but he cannot get away with abject disrespect and rebellion.

12. And while the learned counsel talks about *Ajay Hasia, E.P. Royappa, Maneka Gandhi* and *R.D. Shetty* cases he fails to appreciate that a dress code is not law or legislative action which requires no sanction. In fact the prescription distinguishes persons or things that are grouped together from others left out of the group. A dress code demanding only a white shirt and maroon tie for men without any prescription as to colour of trousers and a white suit and maroon dupatta for the women staff is reasonable classification in a Judicial Court Complex setting where the litigating public, the lawyers and Judicial Officers can easily identify the Court staff by the dress code.

13. There is nothing illegal in the circular of the Learned District &

Sessions Judges prescribing the simple dress code or partial uniform for Ahlmads and Clerks in Class-III service working in the Sessions Division. A dress code may bring with it discipline and uniformity. If the petitioner is not financially compensated by way of a dress allowance then the burdens of white shirt and maroon tie would not be too burdensome or oppressive as compared to the handsome salaries paid to the Court staff. It is a small price for discipline and the duty to be performed. Even assuming that the petitioner had a right to protest, a right to challenge the order prescribing the dress code he should have obeyed the lawful command first and then raised his voice if he felt so strongly about it but he could not disobey the order to the chagrin of his District & Sessions Judge. He was not found wearing the prescribed shirt and tie during the surprise check at Hodal while posted with the Civil Judge (Junior Division) which led to the disciplinary action. The District Judge in the Subordinate Courts is an appointment under Article 232 of the Constitution of India. To inculcate discipline and uniformity to make staff obedient in Subordinate Courts and make them identifiable there is then no illegality in the prescription in the circular dated October 09, 2014 and challenge to the same is as misconceived as it is rebellious. The order does not violate the petitioner's rights under Articles 14, 16 & 21 of the Constitution of India. He has been treated equally in his class. His right to equal opportunity has not been violated. His life and liberty have not been put to stake. The restriction in the circular-notice is not unreasonable or excessive in relation to the object sought to be achieved.

14. The maroon tie is not a *Jallads* noose to be hung from. On the

other hand, the prescription of a white shirt and tie of a certain colour is reasonable classification which tie should be worn proudly by the petitioner as a Government servant working for the affairs of the State in its sovereign function i.e the judiciary. In the matter of discipline the best judge is the District Judge who has to lead the Court of the first and second instance on whom the reputation of the courts rest. The petitioner appears to be a rebel without a cause. The writ jurisdiction is not for a sneeze, a hiccup, a cough or a minor ailment and trivial complaints.

15. I find absolutely nothing in CWP No.4787 of 2011 titled *Fruit & Merchant Union v. Chief Information Commissioner and others*, decided on November 02, 2012 which may be of any help to the petitioner; a decision so strongly relied upon by the petitioner and handed over during the arguments. In this case, an order passed by the State Information Commissioner, Punjab was challenged. The information applied for was regarding payment of market fee and rural development fund and has no bearing on this case even remotely.

16. The petition is in its drift wholly misconceived, vexatious and frivolous litigation and accordingly it is dismissed in limine with compensatory costs assessed at ₹ 20,000/-, for taking this Court's valuable time misspent in assigning reasons for dismissal, with costs to be paid by the petitioner in the accounts of the Haryana State legal Services Authority as a measure of inculcating discipline and respect for the institution he serves.

17. The principle for costs imposed is for the reason that this court cannot pass an order which records "Heard. Dismissed" which order I

would have liked to pass in this case to abridge time, freeing the court of its attention due for other cases on Board, today, crying for final determination and declaration of rights of the litigating public in matters of greater moment.

(RAJIV NARAIN RAINA)
JUDGE

02.09.2016
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Whether speaking/reasoned	Yes
Whether reportable	Yes