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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.835 OF 2015

Mr Shahid M. Khan
Son of Mohammad Khan,
aged about 43 years, married,
resident of C/o. Razai Be
Sayed, Anna Apt. F/1,
St. Inez, Panaji, 403001,

... Petitioner

Versus

1. The State of Goa,
Through its Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa

2. Director of Fire and
Emergency services,
Government of Goa,
St. Inez, Panaji, Goa

3. The Office of Station of Fire
Officer, Fire Station Panaji,
St. Inez, Panaji, Goa

4. Asst. Division Officer,
District Fire Station.
Panaji Head Quarters,
Panaji, Goa.

... Respondents

Mr I. Agha with Ms V. Fernandes, Advocates for the Petitioner.

**Mr Prashil Arolkar, Additional Government Advocate for
Respondents – State.**

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATE : 25th APRIL 2024

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard Mr I. Agha, who appears with Ms V. Fernandes for the Petitioner and Mr P. Arolkar, Additional Government Advocate for the State.
2. Rule was issued in this petition on 26.11.2015, and interim relief staying the operation of the impugned memorandum dated 01.09.2015 was continued until further orders.
3. The challenge in this petition is to the memorandum dated 01.09.2015 by which the Petitioner's application dated 21.08.2014 requesting that he be allowed to sport a beard was rejected on the ground that the Petitioner was required to wear personal protective equipment while discharging firefighting jobs. Additionally, the Petitioner was directed to report for duty with a clean shave and adhere to the department's discipline.
4. The Petitioner, along with the petition, had produced a medical certificate stating that he was suffering from allergic dermatitis and was advised not to shave for two weeks. In his application dated 21.08.2014, the Petitioner had applied to retain his beard on religious grounds.

5. Mr Arolkar, the learned Additional Government Advocate, admitted that there was no rule or regulation based upon which the impugned memorandum dated 01.09.2015 was issued, and the Petitioner was directed to report for duty with a clean shave. However, Mr Arolkar submitted that such a direction was given to the Petitioner for his own safety since the Petitioner, as a Driver Operator in the Directorate of Fire and Emergency Services, was required to wear personal protective equipment while discharging firefighting duties.

6. Mr Agha, the learned Counsel for the Petitioner, submitted that no opportunity of hearing was granted to the Petitioner before the impugned memorandum and the directions contained therein were issued to him. He referred to the learned Single Judge of the Madras High Court decision in *B. Mukhthar Pasha V/s. The General Manager, Personnel*¹ to submit that in the absence of any rule or standing order, no direction could be issued prohibiting the sporting of a beard even by members of the security forces.

7. Mr Agha pointed out that by order dated 26.05.2020, on recommendations of the Departmental Promotion Committee, the Petitioner was promoted from the post of Driver Operator to the position of Leading Fire Fighter on a regular basis. He submitted that this promotion establishes that the Petitioner's sporting a beard has not affected the discharge of his duties in the least.

¹ (1990) 2 MLJ 195

8. In *B. Mukhthar Pasha* (supra), the learned Single Judge of the Madras High Court in the context of a Sub-Inspector, Grade II serving with the Central Industrial Security Force made the following observations:

"6. Neither under the Act or the Rules framed thereunder, or the Standing Orders, is there any provision which prohibits the members of the Security Force to keep a beard. Learned Counsel for the respondents was unable to refer to any provision prescribing the norms of personal appearance in the Act, Rules or Standing orders. In vain did we search for even an executive instruction which could be supplemental in character, prohibiting the keeping of beard by the members of the Security Force. According to learned Counsel for the respondents, however, it is Open to the respondents to issue reasonable instructions to its employees and their failure to carry out those instructions could invite disciplinary action. On principle, there can be no quarrel with the proposition that reasonable instructions can be given by the management to the employees. The question, however, is whether the instruction not to keep a beard, which does not have the sanction of any of the provisions of the Act, Rules, Standing Orders or executive instructions, can be treated as "reasonable". In our opinion, it cannot be so. In the absence of rules, regulations, etc., executive instructions can be given to fill in the gap, but if there are no executive instructions also governing a field, we fail to see how any direction can be given, which is not in furtherance of any of the provisions of the Act, Rules, regulations, etc. No disciplinary action can be initiated against an employer for an act of commission or omission, unless there are provisions in the service rules, etc., prohibiting that act of commission or omission. Vide the impugned communication itself, what the

appellant was told that he has bound by the "rules and regulations" of the department and had. to adhere to the same and in case he disobeyed the rules and regulations and did not come clean shaven, he would have to suffer disciplinary action. Since neither any rule nor any regulation or instruction of the department prohibits the keeping of a beard, the question of the appellant violating any such rule or regulation or instruction by keeping a beard and thereby to invite disciplinary action does not arise. The direction given to the appellant to shave off his beard on the assumption that the "rules and regulations", of the department prohibited the keeping of a beard cannot be said to be either reasonable or lawful direction since no rules or regulations exist prohibiting the keeping of a beard while in service. The direction given to the appellant, under the circumstances, was whimsical and arbitrary without any sanction of the Act, Rules, Standing Orders, regulations or executive instructions governing the service conditions of the appellant. Learned Counsel for the respondents fairly conceded that there was no provision in the service rules, regulations, Standing Orders, etc., prohibiting the keeping of a beard or providing any specific norms of personal appearance. He however, made an attempt to sustain the impugned direction by urging that since under the Central Industrial Security Force Rules, 1969, rules had been framed with regard to "dress regulation" of the members of the Security Force, the direction issued in the impugned communication was traceable to that rule. We cannot agree. Keeping or not keeping a beard has nothing to do with the "uniform" or the "dress regulations" of the members of the Security Force as it restricts itself to prescribing the description and quantity of arms, accoutrements, clothing and other necessary articles like badges, etc., furnished to the members of the force and the manner of wearing the same. The rule

relating to the prescription of uniform, thus, cannot be extended to include within its ambit the keeping or not keeping of a beard. We are unable to agree with the learned Counsel for the respondents that the impugned direction itself be treated as a "rule" made under the Act prescribing that members of the Security Force cannot keep a beard."

9. After concluding that the impugned direction issued to the Petitioner that he should shave off his beard had no sanction of any rule, regulation or executive instruction, the learned Single Judge declined the invitation to decide the question of whether the impugned direction was violative of the fundamental rights guaranteed by Article 25 of the Constitution. Instead, the learned Single Judge relied upon the decision of the Hon'ble Supreme Court in ***Natesh Vs/. State of Maharashtra***², in which it is held that in dealing with constitutional matters, the Court must confine itself to the narrow points a particular proceeding raises. Therefore, unless it is necessary to go into the constitutional issue, the Court must refrain from dealing with constitutional challenges.

10. The decision of the learned Single Judge of the Madras High Court undoubtedly supports the Petitioner's case. However, we are not sure whether the matter should rest only on the ground that no specific rule or regulation prohibited the Petitioner from sporting a beard. In a given case, the requirements of discipline, safety, etc., may prompt an employer to issue some reasonable directions. Moreover, in

2 AIR 1967 SC 1

a given case, such reasonable directions may have some nexus with the job profile or requirements. Therefore, in this matter, we do not propose to rest our decision on the ruling and approach of the learned Single Judge of the Madras High Court in the case of *B. Mukhthar Pasha* (supra).

11. Mr Arolkar pointed out that the impugned direction was issued to the Petitioner for his own safety since the Petitioner was required to wear personal protective equipment while discharging firefighting duties. On the other hand, Mr Agha pointed out that despite the Petitioner sporting a beard from the date of his appointment on 21.08.2000 (and under the interim relief granted by this Court on 30.10.2015), which was duly trimmed from time to time, never interfered with the discharge of Petitioner's duties. Mr Agha pointed out that the Petitioner has discharged and continues discharging his duties diligently and efficiently. He pointed out that it is for this reason that the Petitioner was recommended for and eventually promoted as a Leading Fire Fighter vide order dated 26.05.2020.

12. Without any rule or regulation, it would still be possible to hold that the employer retains the power to issue reasonable directions to the employees depending upon several factors like job profile, the nature of duties, safety concerns, etc. However, such directions will have to be reasonable. Further, such directions must have some nexus with the job profile and the nature of duties. Such directions must also

be proportionate and consider reasonable requirements of privacy, liberty, religious sentiments, etc.

13. From the limited material placed before us, we find that the impugned order has no sanction of any rule or regulation. The impugned order was not made after ascertaining the Petitioner's concerns or after examining whether the Petitioner's sporting a duly trimmed beard would affect the discharge of his duties as a Fire Fighter or pose any danger to his firefighting colleagues. The Petitioner's contention that he has been sporting a beard for the past 23 years in service without this factor affecting the discharge of his duties in the least has also not been considered. The Petitioner's promotion with effect from 26.05.2020 as a Leading Fire Fighter, despite his sporting a well-trimmed beard, is also one of the factors that must now be considered.

14. The impugned memorandum does not appear to have considered the issue from the perspectives referred to above or, for that matter, other relevant perspectives that would arise in a case of this nature. Therefore, it would be in the interest of justice if the impugned communication is set aside and the respondents reconsider the Petitioner's request in accordance with the law and on its own merits. Additionally, the interest of justice would be better served if the Petitioner is granted an opportunity of making a further and detailed representation within four weeks from today.

15. Before disposing of the Petitioner's application/representation, the concerned respondent should consider granting the Petitioner an opportunity of a hearing so that the Petitioner can furnish clarifications and also respond to the concerns, if any, that his employer would have any such matters. Such an interaction would enable the employer and the Petitioner to understand and appreciate the respective concerns.

16. Accordingly, the impugned communication dated 01.09.2015 is set aside. The Petitioner is granted liberty to make a representation within four weeks from today to respondent no.2. Respondent no.2 is to dispose of the representation and Petitioner's request dated 21.08.2014 in accordance with law and on its own merits. The petitioner and respondent no.2 must consider the observations in this judgment and order and proceed accordingly.

17. The larger issue based upon the rights under Articles 14, 21 and 25 of the Constitution is left open.

18. The rule is made absolute in the above terms without any cost order.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

NITI K
HALDANKAR

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