

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 136 OF 2014

(Subject – Enquiry Notice)

DISTRICT: AURANGABAD

Shri Shaikh Rasool S/o Allauddin,)
Age: 37 years, Occu. : Service (as Police)
Constable, Jawahar Nagar Police,)
Station), R/o. Abrar Colony, Beed)
By Pass, Aurangabad.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra)**
- 2) **The Director General of Police,)**
M.S. Mumbai.)
- 3) **The Commissioner of Police,)**
Aurangabad City.)
- 4) **The Dy. Commissioner of Police))**
(H.Q) Aurangabad City.)
- 5) **The Principal Secretary,)**
Home Department,)
Maharashtra, Mumbai.)

.. **RESPONDENTS**

APPEARANCE : Shri H.M. Shaikh, learned Advocate for the
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate, learned
Presenting Officers for the Respondents.

CORAM : J.D. KULKARNI, VICE CHAIRMAN (J)
&
P.N. DIXIT, MEMBER (A)

PER : J.D. KULKARNI, VICE CHAIRMAN (J)

J U D G M E N T**(Delivered on this 23rd day of February, 2018.)**

1. The applicant, who is a Police Constable has filed the present Original Application for following reliefs:-

“A) This original application may kindly be allowed thereby quashing and setting aside the impugned order dt. 20.02.2014 (Annexure ‘B’) issued by respondent No. 4.

B) The original Application may kindly be allowed thereby directing respondent no. 3 & 4 to permit the applicant to keep/maintain/grow beard.

C) This original application may kindly be allowed there by permanently restraining the respondents no. 3 & 4 from forcing the applicant not to keep/maintain/grow beard.

D) This original application may kindly be allowed thereby taking action u/s 12 of the Contempt of Court Act 1971 against respondent No. 1 state for not following directions dt. 14.11.2007 issued by this Tribunal. ”

2. Vide impugned order dated 20.02.2014, the Deputy Commissioner of Police (Head Quarter), Aurangabad City issued order cancelling permission to the Police officers, including the applicant, to keep the beard. It was also intimated that those who were granted such permission shall take out their beard within

seven days or else to face departmental action. According to the applicant, the impugned action of respondent Nos. 3 and 4 is in violation of the provisions of Article 14 & 16 of the Constitution of India. In O.A. Nos. 431/1999, 256/1998 & 562/2003 this Tribunal has directed the respondent No. 1 to take policy decision regarding the issue involved in these O.As. within a period of four months. But no decision has been taken and therefore, the respondents have committed contempt of Court.

3. In the affidavit in reply filed by the respondent Nos. 2 to 4, it is stated that the Government of Maharashtra has issued Government Circular dated 08.02.2008 in pursuance of the order passed in O.A. Nos. 562/2003, 256/1998 & 431/1999 in which it has been clearly stated that, a police personnel, as per their religious rituals, may be permitted to keep the beard for a special month and to take permission. Such permission granted for temporary period. Therefore, no contempt has been committed. In view of the said decision the general permission was rejected.

4. Learned Advocate for the applicant submits that one Shri Zahiroddin Shamsoddin Bedade has filed W.P. No. 8916/2012 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad and the said judgment has been challenged before the Hon'ble Apex Court and the Hon'ble Apex

Court in S.L.P. (Civil) No. 920/2013 has granted stay to the disciplinary proceedings against the petitioner. Perusal of the order passed by the Hon'ble Apex Court shows that the Hon'ble Apex Court has only granted stay to the disciplinary proceedings and the applicant is not a party in the said petition.

5. We have perused the order passed by the Hon'ble High Court in W.P. No. 8916/2012 as referred aforesaid. In paragraph No. 18, the Hon'ble High Court has observed as under:-

“18. In view of the stand adopted by the respondent-State, the decision reached by the Home Department and the Police Department we are of the considered view that the impugned order passed by the respondent No. 3 does not interfere or violate the fundamental right guaranteed to the petitioner under Articles 25 and 26 of the Constitution of India. We reiterate that a citizen is entitled to right of freedom of religion. The Constitution provides right of professing religion but they are subject to certain restrictions which are clearly demarcated under the provision of the Constitutional scheme.”

In paragraph Nos. 10 and 11 of the said judgment, the Hon'ble High Court has also observed as under:-

“10. We agree with the submissions advanced on behalf of the State that police force has to be a disciplined force. Being a law enforcing agency, it is necessary that such force must have secular image which strengthens the concept of national integration. In

situation like communal riots posting at places of worship, sensitive areas member of the disciplined force has to discharge his duties. In such situation identity of the members of the force on religious denomination is not advisable to be projected. In the present day situation considering the peculiar challenges faced by the disciplined police force these realities of life cannot be ignored and lightly brushed aside. It is obvious that, the members of law enforcing agencies, police force are entitled to protection of fundamental rights. Their religious beliefs, sentiments, customs are to be respected.

11. The learned counsel for the petitioner could not place before us any piece of evidence demonstrating that keeping beard is a fundamental tenet of Islam or the right of the petitioner to keep beard having any basis under any statutory legislation or guidelines of binding nature.”

In view of the aforesaid legal position, we are of the opinion that it will not be proper to direct the respondent Nos. 3 and 4 to permit the applicant to keep/maintain/grow beard. If the applicant deserves to keep beard during religious occasion, he may apply for permission to keep/maintain/grow beard as per the Circular. The Hon'ble Apex Court has only granted stay to the disciplinary proceedings against the petitioner before it, but has not quashed the decision taken by the Government not to allow to keep the beard permanently. In such circumstances, the

impugned communication dated 20.02.2014 (Annexure 'B') cannot be said to be illegal or unconstitutional. If at all the Hon'ble Apex Court decides the petition in favour of the petitioner or quashes the policy decision taken by the Government, the applicant will be entitled to apply for permission or to keep beard permanently.

6. Considering the discussions in foregoing paragraphs, we are therefore, of the opinion that there is no merit in the present O.A. and hence, following order :-

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (A)

VICE CHAIRMAN (J)

PLACE : AURANGABAD.

DATE : 23.02.2018.

KPB/D.B. O.A. NO. 136 of 2014 JDK & PND 2018 Enquiry Notice