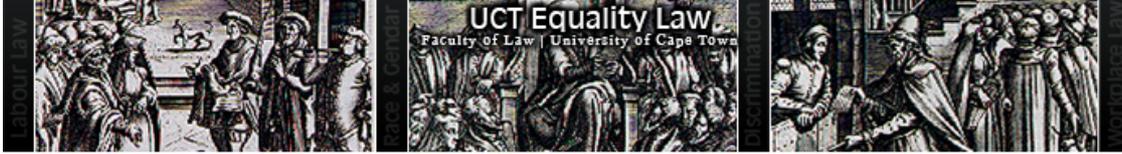




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DEPARTMENT OF CORRECTIONAL SERVICES AND ANOTHER v POLICE AND PRISONS CIVIL RIGHTS UNION (POPCRU) AND OTHERS

Created by Jenny Erasmus [Administrator], last modified on Jul 04, 2013



YEAR: 2013

PLAINTIFF / APPLICANT / APPELLANT: FIRST APPELLANT: THE DEPARTMENT OF CORRECTIONAL SERVICES
SECOND APPELLANT: THE AREA COMMISSIONER: POLLSMOOR

DEFENDANT / RESPONDENT: FIRST RESPONDENT: POLICE AND PRISONS CIVIL RIGHTS (POPCRU)
SECOND RESPONDENT: LEBATLANG EJ
THIRD RESPONDENT: NGQULA TR
FOURTH RESPONDENT: KAMLANA T
FIFTH RESPONDENT: JACOBS C
SIXTH RESPONDENT: KHUBHEKA MW

COURT: SUPREME COURT OF APPEAL

CITATION: (107/12) (2013) ZASCA 40 (28 MARCH 2013)

POST / PRIOR ACTION:

Prior Action:

LABOUR COURT: POLICE AND PRISON RIGHTS UNION AND OTHERS v DEPARTMENT OF CORRECTIONAL SERVICES AND ANOTHER 2010 (9) BCLR 921 (LC); (2010) 31 ILJ 2433 (LC); (2010) 10 BLLR 1067 (LC), available at <http://www.saflii.org.za/za/cases/ZALC/2010/68.html>

LABOUR APPEAL COURT: DEPARTMENT OF CORRECTIONAL SERVICES AND ANOTHER V POLICE AND PRISON CIVIL RIGHTS AND OTHERS (2011) 32 ILJ 2629 (LAC), available at <http://www.saflii.org/za/cases/ZALAC/2011/21.html>.

JUDGE(S): MAYA JA (NUGENT, PILLAY JJA, PLASKET AND MBHA AJJA CONCURRING)

GROUND(S) OF DISCRIMINATION: RELIGION, CULTURE, GENDER

STATEMENT OF FACTS:

The second to sixth respondents were dismissed from the employ of the first appellant as they failed to comply with an instruction by the second appellant to cut off their dreadlocks in compliance with the dress code of the first appellant. The provisions of the dress code of the first appellant regulating the hairstyles of male officers, amongst other things, prohibited male officers from wearing their hair in a "dreadlock" hairstyle. The second to sixth respondents aggrieved by their dismissal instituted action in the Labour Court where they argued, inter alia, that their dismissal was automatically unfair as it unfairly discriminated against them on the grounds of religion and/or culture and/or gender. The Labour Court held that the respondents had proved neither direct or indirect discrimination on the grounds of religion or culture. It did however determine that the second to sixth respondents had been unfairly discriminated against on the ground of gender and that the dismissal was automatically unfair in terms of s 187 (1)(f) of the Labour Relations Act (LRA). The Labour Court ordered that the respondents, who so desired, be reinstated, alternatively the respondents receive compensation equivalent to 20 months remuneration.

The appellants appealed against the decision of the Labour Court. The Labour Appeal Court dismissed the appeal. It upheld the Labour Court's finding that there existed gender discrimination and added two additional grounds of discrimination, namely religion and culture.

ISSUE OF LAW: Whether the discrimination on the grounds of religion, culture and gender was justifiable?

DECISION, RATIO AND OUTCOME (including minority judgment):

The Supreme Court of Appeal dismissed the appeal with costs.

On appeal to the Supreme Court of Appeal the appellants conceded that the dress code was "directly discriminatory on all three proscribed grounds, namely religion, culture and gender." The court noted that but for the second to sixth respondents religious and cultural beliefs they would not have worn dreadlocks, and but for such fact, in addition to their gender, they would not have been dismissed. The differentiation in treatment constituted discrimination. The appellant's motives and objectives behind the dress code were irrelevant for such a determination.

The focus of the judgment was whether the discrimination was justifiable. The court held that the discrimination was not justifiable. In a newly advanced argument in the Supreme Court of Appeal, the appellants justified the ban on the basis that it served to prevent the use of dagga in the prison. The appellants had previously argued that the rationale for the dress code was to create uniformity and neatness, with the objective of creating discipline and security in the prison. Before the Supreme Court of Appeal the appellants argued that the ban was not due to the hairstyle of dreadlocks but due to the "...use of dagga..." associated with Rastafari and "intwasa" initiates (with which dreadlocks were associated). The appellants argued that the dreadlocks drew attention to Rastafari officers and made them "conspicuous and susceptible to manipulation by Rastafari and other inmates to smuggle dagga" into the prison. Furthermore the appellants did not associate this risk with female officers as it was normal for a female to have long hair and Rastafarianism woman and children did not use dagga. It was argued that the ban on dreadlocks served a legitimate government purpose in reducing the identification of Rastafari officials. The court held that the "belated argument" had no foundation.

The court regarded the ban on dreadlocks as having a devastating effect on the respondents as their genuinely held beliefs caused them to lose their employment. As the constitutionality of the dress code was unchallenged, the court was limited to assessing whether the discrimination was justifiable in terms of s 187 (2)(a) of the Labour Relations Act, which provides that a dismissal may be fair if the reason for dismissal relates to an inherent requirement of the particular job. The court held that the appellants had not established that the dreadlocks made the respondents open to manipulation or that it negatively effected their job performance. As such short hair, and the absence of dreadlocks, was not shown to be an inherent requirement of the respondents jobs. The respondents religious and culture beliefs did not affect their job performance, the safety of the other employees or create "undue hardship to the employer in a practical sense." As such the ban on dreadlocks unjustifiably impacted the exercise of the respondents religious and culture belief. There existed no rational connection between the "purported purpose of the discrimination and the measure taken." The court noted that the Department would have suffered no "unreasonable burden" had it exempted the respondents.

LINK TO FULL DECISION: <http://www.saflii.org.za/za/cases/ZASCA/2013/40.html>

LABELS: