

CASE NO.:
Transfer Case (civil) 38 of 2002

PETITIONER:
Jasbir Kaur & Ors.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 13/11/2003

BENCH:
K.G.Balakrishnan & B.N.Srikrishna

JUDGMENT:
J U D G M E N T
With

Transfer Case (C) Nos.39-42 of 2002
Transfer Case (C) No.46 of 2002,
Transfer Case(C) Nos.54-56 of 2002,
Transfer Case(C) No.70 of 2002,
Special Leave Petition (Civil) Nos.12904-12909 of 2002,
Special Leave Petition (Civil) No.14275 of 2002 and
Special Leave Petition (Civil) Nos.14487 of 2002,

SRIKRISHNA, J.

The only issue thrown up by this group of cases is : 'What should be the uniform to be worn by members of the Military Nursing Services?' Persistence of parties and ingenuity of counsel have succeeded in giving a constitutional moment to an issue which is but an one of administration of an auxiliary branch of the Armed Services.

A force called Indian Military Nursing Service was constituted as part of the armed forces of the Union of India by Ordinance No.XXX of 1943 titled The Indian Military Nursing Service Ordinance, 1943, which was brought into force on 15th September, 1943. Section 3 of the said Ordinance declares that there shall be raised and maintained in the manner provided in the Ordinance "as part of the armed forces of the Union and for service with the Indian Military forces" an auxiliary force which shall be designated as Indian Military Nursing Service. The Ordinance prescribes the conditions of eligibility for appointment in section 6. Section 9 of the Ordinance provides that the provisions of the Indian Army Act, 1911 shall, to such extent and subject to such adaptations and modifications as may be prescribed, apply to members of the Indian Military Nursing Service as they apply to Indian commissioned officers, unless they are clearly inapplicable to women.

Section 10 of the said Ordinance empowers the Central Government to make Rules to carry out the purposes of the ordinance and section 11 vests in The Chief of the Army Staff the power to make regulations providing for all matters to be laid down and generally for all detail connected with the organisation, pay allowances, duties, discipline, training, clothing, equipment and leave of members of the Indian Military Nursing Service.

In exercise of the powers vested in him The Chief of Army Staff prescribed the appropriate uniform to be worn by the

members of the Indian Military Nursing Service. The prescribed uniforms were changed from time to time taking into account the advice of special committees appointed by The Chief of the Army Staff to periodically review the issue.

Despite the fact that the Indian Military Nursing Service (hereinafter called as 'IMNS') has been made an auxiliary force, the members of this service are not subject to all the provisions of the Army Act and have been treated separately while being part of the Indian Army.

By an order dated 25.1.2000 the Additional Director General of Military Nursing Service issued a Dress Code for members of IMNS prescribing the Dress Code for different purposes. We are not concerned with the details of the prescribed uniforms for that in no way affects the legal issue sought to be canvassed before the Court. Nor are we really concerned with the reasons which impelled the appropriate authority to prescribe any particular dress as the uniform to be worn by the members of the IMNS. However, it appears that a number of problems were faced in the hospital environment in the wake of the dress code issued by the letter dated 25.1.2000. These problems were brought to the notice of Medical Services Advisory Committee. With an intent to solve these problems, which pertained to patient care related issues, a decision was taken to modify the dress code by an order issued on 11.9.2001. The said order was challenged by members of IMNS by different writ petitions before several High Courts, inter alia, on grounds of violation of the Fundamental Rights under Articles 14 and 21 of the Constitution. The Bombay, Allahabad and Karnataka High Courts dismissed such writ petitions on the ground that no issue pertaining to Fundamental Rights arose and observing that the issue of prescribing uniform for the IMNS was a matter well within the competence of the military authorities. Some other High Courts in the meanwhile admitted similar writ petitions and issued interim orders. Special leave petitions were moved against the decisions of the Allahabad, Bombay and Karnataka High Courts in this Court. To avoid inconsistency in judicial decisions, this Court admitted the special leave petitions and also transferred all the pending writ petitions to itself by an order made on 28.1.2002 in Transfer Petition (C) Nos.851-857 of 2001, which reads as follows:

"We have heard learned counsel for the parties. The writ petitions mentioned in prayer column of these petitions, in our opinion, involves substantial question of law. Therefore, it is just necessary this issue should be decided by a single court. Taking into consideration the importance of the issue, we think it appropriate that these petitions should stand transferred to this court for disposal in accordance with law. It is so transferred.

It is pointed out that some of the High Courts have issued interim orders in favour of the petitioners. If it is so, those interim orders will continue until further orders of this Court.

Accordingly, these petitions are allowed. The writ petitions stand transferred to this Court.

Liberty to file additional documents."

When these petitions came up for hearing on 6th May, 2002 it was represented to this Court that the Union of India wanted to appoint a Review Committee to consider the question of uniform

to be worn by the nurses in the Army. This Court made the following order:

"Upon hearing counsels the Court made the following order:

There shall be an interim order maintaining status quo in regard to the uniform of Nurses concerned in these petitions. Uniform they are wearing as on today shall be continued to be worn. If by virtue of interim orders of the High Court or otherwise at different places different uniforms are being worn, same shall continue till the disposal of these petitions.

List these matters for final disposal in the month of September 2002. In the mean time if the Union of India wants to appoint a review committee to consider the question of uniform to be worn by the Nurses in the Army, they are free to do so and report to this Court."

The Union of India thereafter constituted a Committee known as 'Military Nursing Service Dress Review Committee' which was composed of the Director General of Medical Services (Army), as the Chairman, and representatives from the Director General of Armed Forces Medical Service, representative from DGMS (Army), representative from DGMS (Navy), representative from DGMS (Air Force), Dy. Judge Advocate General and ADG Military Nursing service as members. The terms of reference of this Committee were the following:

"Terms of Reference

1. To carry out a comprehensive review of the MNS Dress Code from its inception to the present dress code as promulgated vide army HQ letter Nos:

(a) B/70001/DGMS-4A dt. 25 Jan 2000

(b) B/42706/AGREEMENT/CW-1 dated 11 September 2001 as amended vide our letter No. B/42706/AGREEMENT/CW-1 dated 25 October 2001

2. To Ascertain and deliberate upon various issues raised by MNS against the existing dress code so promulgated and analyse the cause of objection to the same including the issue of dress violations.

3. To go into all the issues involved and suggest a dress code, whether it be the existing dress duly modified, or a new dress code. The dress code so recommended should be befitting, serve functional requirement and be in keeping with the ethos and requirement of the Medical Services.

4. To ensure that the dress code so recommended facilitates the efficient discharge of the primary duty of the MNS staff which is of patient care and efficient management of

patient wards.

5. In consonance with the directions of the Court it is to be ensured that there is a clear difference and distinction in terms of dress between the doctors and the nurses.

6. To go into the universality of dresses as worn by nursing staff in other major civil hospitals, para military hospitals and where possible nursing staff of foreign armies to draw suitable parallels to help evolve a befitting dress code.

7. While making its recommendations on the dress code the issue of any expenditure and its financial implications thereto should be borne in mind and recommendations made thereto.

8. The Committee will also lay down the channel of promulgation of the new dress code including the recommended time frame for its implementation."

The Dress Review Committee held its deliberations on 8th and 9th July 2002 and made a report. Though Major General P.K. Sethi, Addl DGMNS and Brig.(Mrs.) Usha Sikdar, DDMNS Central Command, were members of the Committee, they expressed their reservations with regard to the report and gave dissenting notes.

The Dress Review Committee went into the historical background of the constitution of the Military Nursing Service as a separate cadre, the applicable dress regulations for the different services and the problems faced in the hospital environment, which were brought to its notice. It also took into account a number of objections made by the IMNS questioning the rationality and validity of the 11th September 2000 order. The Dress Review Committee meticulously considered the objections and having considered various options found in favour of the Safari Suit of soothing colour (Beige colour) in suitable fabric with badges of rank on shoulders to meet the seasonable requirements of summer and winter, as the best available option. It also recommended that the change over should be effected within a time frame of three months and that the cost of the recommended dress should be borne by the Government as one time measure in the form of an 'outfit allowance' by obtaining necessary sanction from the competent authority. A copy of the Dress Review Committee report has been placed on the record before us and learned counsel have taken us through it.

Learned counsel, Mr. R. Venkataramani and Mr. M.N.Krishnamani, appearing for petitioners in different cases, basically urge two contentions. They contend that the prescribed uniform violates Articles 14 and 21 of the Constitution. When it was pointed out to the learned counsel that there was no question of Article 21 being considered unless they were able to demonstrate that the prescribed uniform was outrageous of modesty and dignity of womanhood or that it was so inconvenient as not to bear the onslaughts of nature, both learned counsel did not press the contentions based on Article 21. They however, contended that Article 14 was violated as the uniform was intended to discriminate against the members of the IMNS by making them

out to be a separate class.

In our view, the contention is entirely misconceived and unfounded. That the Indian Military Nursing Service is a separate class, sui generis, even though an auxiliary force of the Indian Military, is an undeniable fact. The historical background in which this force was established and the legal provisions applicable to it leave no manner of doubt that notwithstanding that it is a part of the Indian Army, IMNS is a distinct but separate class by itself. In any event, whether any part of the military services should have any uniform, and, if so, what should be the uniform, is an issue entirely within the province of The Chief of Army Staff by reason of Army Act, the Indian Military Nursing Act and the Regulations made by the Chief of Army Staff by the powers derivable therefrom. We see no scope for application of Article 14 in such matters, nor is any case made out therefor.

A major grievance made on behalf of the petitioners was that no heed was paid to their objections before the Dress Code was finally decided. Even if true, the contention has lost its force presently. When taken through the Dress Review Committee's Report by the learned Additional Solicitor General, we noticed that the said Committee has meticulously applied its mind to several objections raised by the representatives of the IMNS. Each objection has been carefully examined and appropriate recommendation has been made by the review committee.

Apart from affording an opportunity of putting forth their views in the matter, the members of IMNS could not have asked for anything higher. Each grievance has been carefully considered and addressed by the Dress Review Committee, and it is for the army authorities to take appropriate decision. A decision such as the one challenged before us can hardly be faulted unless on the ground of Wednesbury principle of rationality. In our view there is no such irrationality in the decision of the Army Act which requires us to interfere in exercise of our constitutional powers. The petitions have no merit and are liable to fail.

The members of the IMNS have the glorious role model of the 'Lady with the Lamp', Florence Nightingale, who went around on the battle field, caring more for the patients than for her own life. We hope that the shining example of the Lady with the Lamp shall continue to be emulated by the members of the Indian Military Nursing Service.

All the petitions dismissed. Interim orders vacated. The respondents are at liberty to take any appropriate decision.

There shall be no order as to costs.