

ANTONIE v GOVERNING BODY, SETTLERS HIGH SCHOOL, AND OTHERS 2002 (4) SA 738 (C)

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Citation	2002 (4) SA 738 (T)
Case No	Case No 3791/2000
Court	Cape Provincial Division
Judge	van Zyl J and Van Reenen J
Heard	February 8, 2002
Judgment	February 8, 2002
Counsel	Anton Katz (with him D Borgstrom) for the applicant. No appearance for the respondents.
Annotations	Link to Case Annotations

Flynote : Sleutelwoorde

School and school board - Learners - Code of conduct - Contravention of - Assessment of - Guidelines for consideration by governing bodies of schools in adopting codes of conduct, contained in schedule issued as Notice 776 of 1998 by Ministry of Education (in terms of s 8(3) of South African Schools Act 84 of 1996) - Focus of schedule on positive discipline and need to achieve culture of reconciliation, teaching, learning and mutual respect and establishment of culture of tolerance in schools - This to be done in context of democratic values of human dignity, equality and freedom as enshrined in Bill of Rights in Constitution of the Republic of South Africa Act 108 of 1996, including freedom of expression - Failure by pupil to comply with prohibition in code of conduct not to be assessed in rigid manner - Such rigid assessment making nonsense of values and principles set forth in schedule and bringing it into conflict with justice, fairness and reasonableness underpinning new Constitution and centuries of common law - Adequate recognition to be given to offender's need to indulge in freedom of expression, which might or might not relate to clothing selection and hairstyles.

School and school board - Learners - Misconduct - Suspension of learner from school - 'Serious misconduct' in terms of s 2(1) of regulations relating to serious misconduct by learners published as Provincial Notice 372 of 1997 (WC) - What constitutes - Subsection 2(1)(e) of regulations providing that learner who conducts himself or herself in 'disgraceful, improper or unbecoming manner' guilty of serious misconduct - Such behaviour to be of particularly serious or aggravating nature before it can be classified as such - Conduct envisaged by ss (e) something akin to immoral, promiscuous or shockingly inappropriate behaviour - Mere offence against school's code of conduct, relating to appearance of pupils, not constituting such misconduct.

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Headnote : Kopnota

The Ministry of Education issued a schedule during April 1998 as Notice 776 of 1998. In terms of s 8(3) of the South African Schools Act 84 of 1996 it lays down guidelines for consideration by governing bodies in adopting a code of conduct for learners. The focus in the schedule is on positive discipline and the need to achieve a culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace in all schools. This must be done in the context of the democratic

values of human dignity, equality and freedom as enshrined in the Bill of Rights contained in the Constitution of the Republic of South Africa Act 108 of 1996. Freedom of expression is accorded special mention in s 4.5.1 of the schedule. Where the code of conduct of a particular school contains a prohibition pertaining to the appearance of learners (*in casu*, hypothetically, a prohibition against the growing of dreadlocks and the wearing of head-gear by girls), the failure to comply with the prohibition ought not to be assessed in a rigid manner. That would make nonsense of the values and principles set forth in the schedule and would bring it into conflict with the justice, fairness and reasonableness which underpins the new Constitution and centuries of common law. The question should be asked, in this regard, whether or not the prohibition is aimed at promoting positive discipline and whether or not non-compliance therewith justifies punishment or some other form of sanction. This requires a spirit of mutual respect, reconciliation and tolerance. The mutual respect, in turn, has to be directed at understanding and protecting, rather than rejecting and infringing upon, the inherent dignity, convictions and traditions of the offender. Most importantly, adequate recognition has to be given to the offender's need to indulge in freedom of expression, which might or might not relate to clothing selection and hairstyles, as provided in s 4.5.1 of the schedule. (Paragraphs [16] and [17] at 742H - 743B.)

Section 2(1) of the regulations relating to serious misconduct of learners published as Provincial Notice 372 of 1997 on 1 October 1997 reads as follows: 'Subject to the provisions of [the South African Schools Act 84 of 1996], a learner at a school who - (a) has been convicted by a court of a criminal offence and sentenced to imprisonment without the option of a fine; or (b) used or had in his or her possession intoxicating liquor or other drugs on the school grounds or during a school activity; or (c) is guilty of assault, theft or immoral conduct; or (d) has been repeatedly absent without leave from school and/or classes; or (e) conducts himself or herself, in the opinion of the governing body, in a *disgraceful, improper or unbecoming manner*, shall be guilty of serious misconduct.' The nature of the conduct set forth in ss 2(1)(a) - (d) must of necessity assist in determining what constitutes 'disgraceful, improper or unbecoming' behaviour for purposes of ss 2(1)(e). It quite clearly has to be of a particularly serious or aggravating nature before it can be classified as such. The kind of conduct envisaged by ss 2(1)(e) is something akin to immoral, promiscuous or shockingly inappropriate behaviour. An offence against the code of conduct of a school (*in casu*, in connection with the appearance of learners) cannot remotely be classified as such behaviour. (Paragraphs [18] and [19] at 743E/F - G.)

Cases Considered

Annotations

Statutes Considered

Statutes

The Constitution of the Republic of South Africa Act 108 of 1996, see *Juta's Statutes of South Africa 2000* vol 5 at 1-145

The South African Schools Act 84 of 1996, s 8(3): see *Juta's Statutes of South Africa 2000* vol 3 at 1-371

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The South African Schools Act 84 of 1996, Regulations, Provincial Notice 372 of 1997, s 2(1).

Case Information

Application for the review and setting aside of the first respondent's decision finding the applicant guilty of serious misconduct. The facts appear from the reasons for judgment.

Anton Katz (with him *D Borgstrom*) for the applicant.

No appearance for the respondents.

Judgment

Van Zyl J:

Introduction

[1] The applicant seeks on review to set aside the first respondent's decision finding her guilty of serious misconduct and suspending her from attending school for a period of five days. The suspension was stayed pending the finalisation of the review, which is not being opposed by any of the respondents.

[2] At the time of the said decision, taken on 10 May 2000 the applicant was 15 years old and a grade 10 learner at the Settlers High School in Bellville. She no longer attends the school, so that the implementation of the suspension is no longer in issue. The matter cannot, however, be regarded as moot in that the first respondent's decision and sanction are permanently recorded on the applicant's school disciplinary record. It hence remains a blot on her school career and may impact negatively on her personality, dignity and self-esteem. It may, indeed, affect her normal development into full maturity and even have a seriously prejudicial affect on her future career. In addition it is important, I believe, that this Court lay down guidelines for dealing with and resolving unfortunate situations such as that which has given rise to the present application. From this point of view the applicant was, in my view, correctly advised to take the first respondent on review without first attempting to exhaust other available domestic remedies.

Background

[3] The salient facts and circumstances may be dealt with briefly. The applicant became interested in various religions at an early age. During December 1999 she decided to embrace the principles of the Rastafarian religion. One of these principles is that Rastafarians are required to grow their hair into so-called dreadlocks. Another is that Rastafarian women should cover their heads.

[4] During the first school term of 2000 the applicant, supported by her mother, approached the headmaster of the school, one Mr Trevor Webster, on several occasions for permission to wear dreadlocks and a cap, as an expression of her religion, while attending school. When no permission ensued, her religious convictions prompted her, during April 2000, to attend school with a black cap covering her dreadlocks. The cap was crocheted by herself and matched the prescribed school colours.

[5] Mr Webster's response was that she was acting in conflict with the

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school's code of conduct and in defiance of an arrangement, negotiated with the applicant's mother, that she would not wear headgear with her school uniform. He

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regarded her defiance of school rules and authority as a disciplinary matter requiring referral to the first respondent as governing body of the school. She was thereupon summoned to attend a disciplinary hearing before the first respondent on 10 May 2000.

[6] At the hearing the applicant was charged with serious misconduct in that she had acted in an unbecoming manner, in defiance of school regulations, by wearing headgear and growing dreadlocks according to Rastafarian custom. Mr Webster testified that she had caused 'disruption and uncertainty' by her conduct. More particularly disruptive was her breach of school rules and defiance of authority. This created a situation which could escalate.

[7] The applicant and her mother also testified. The gist of their evidence was that the applicant had not caused any disruption and that her appearance was at all times neat and tidy. Both emphasised her need to express her religious convictions and to develop her individuality.

[8] After consideration of the evidence and aLLrgument tendered by the legal representatives, the first respondent held that the applicant was 'guilty of serious misconduct' as charged.

The code of conduct

[9] The code of conduct provides for the required apparel and general appearance of girl learners. Specific attention is given to hair, in respect of which the following appears:

'The basic rule is that hair must be neat and tidy.

- 1.1 No coloured bands, slides, clips, bows etc other than white, navy blue, light blue, black or, in the case of slides, the colour of the individual's hair.
- 1.2 No "scrunchies" - elasticised bands worn around ponytails.
- 1.3 No butterfly clips or clamps.
- 1.4 No ponytails on top of the head.
- 1.5 Hair must be tied up if below the collar.
- 1.6 Banana clips are allowed but only in regulation colours.
- 1.7 Fringes below the eyebrows must be clipped back.
- 1.8 No "mod" hairstyles, eg punk or little curls or pigtails hanging down the back or on top of the head.
- 1.9 Hair may not be tinted or rinsed with a colour rinse. Any girl who violates this rule will be required to restore her hair to the original natural colours. No highlights are allowed.
- 1.10 If the hair is permed it may not be frizzy or stand out in all directions.
- 1.11 No big bows or fancy hair ornaments allowed.'

[10] The remainder of this section deals with clothing requirements, more specifically shorts or dresses, shoes, blazers, raincoats, jerseys, stockings or socks and scarves.

[11] It is significant that no mention is made, under the heading of 'hair', to dreadlocks or anything similar. There is likewise no reference, in the discussion of clothing, to headgear.

[12] It is difficult to escape the conclusion that the members of the first

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respondent, in considering the charges levelled against the applicant, did not apply their minds to the aforesaid provisions of the code of conduct. If they had, they would, and indeed should, have realised that the growing of dreadlocks and the wearing of headgear was not prohibited thereby.

[13] Of some interest in this regard is a schedule which was issued by the Ministry of Education during April 1998 as Notice 776 of 1998. In terms of s 8(3) of the South African Schools Act 84 of 1996, it lays down guidelines for consideration by governing bodies in adopting a code of conduct for learners.

[14] The focus in the schedule is on positive discipline (s 1.4 and 1.6) and the need to achieve 'a culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace in all schools' (s 2.3). This must be done in the context of the democratic values of human dignity, equality and freedom, as enshrined in the Bill of Rights contained in the Constitution of the Republic of South Africa Act 108 of 1996 (s 4.1). Every learner is accorded 'inherent dignity' and 'the right to have his/her human dignity respected', in the sense of 'mutual respect including respect for one another's convictions and cultural traditions' (s 4.3). In this regard educators and learners are encouraged (in s 4.4.1) 'to learn the importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict and differences and to make use of due process of law'.

[15] Freedom of expression is accorded special mention in s 4.5.1 of the schedule. It reads:

'Freedom of expression is more than freedom of speech. The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, learner's rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited, as the disruption of schools is unacceptable.'

[16] I have sought in vain to find these principles clearly enunciated in the code of conduct to which the applicant was subject. That does not, of course, mean that they do not have a role to play in the interpretation and application of the code of conduct. Even if, hypothetically, the growing of dreadlocks and the wearing of headgear were prohibited by the code of conduct, the failure to comply with this prohibition should not be assessed in a rigid manner. This would make nonsense of the values and principles set forth in the schedule and would bring it into conflict with the justice, fairness and reasonableness which underpins our new Constitution and centuries of common law.

[17] The question should be asked, in this regard, whether or not the prohibition is aimed at promoting positive discipline and whether or not non-compliance therewith justifies punishment or some other form of sanction. This requires a spirit of mutual respect, reconciliation and tolerance. The mutual respect, in turn, must be directed at understanding

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and protecting, rather than rejecting and infringing, the inherent dignity, convictions and traditions of the offender. Most importantly, adequate recognition must be given to the offender's need to indulge in freedom of expression, which may or may not relate to clothing selection and hairstyles, as provided in s 4.5.1 of the schedule.

Serious misconduct

[18] The applicant was held to be guilty of 'serious misconduct' in that she grew dreadlocks and wore a cap. It has been clearly established that this conduct was not in conflict with the provisions of the code of conduct. But even if it were, could it constitute 'serious misconduct' in terms of s 2(1) of the regulations relating to serious misconduct of learners and published as Provincial Notice (PN) 372 of 1997 on 31 October 1997? The said section reads:

'Subject to the provisions of the Act, a learner at a school who -

- (a) has been convicted by a court of a criminal offence and sentenced to imprisonment without the option of a fine; or
- (b) used or had in his or her possession intoxicating liquor or other drugs on the school grounds or during a school activity; or
- (c) is guilty of assault, theft or immoral conduct; or
- (d) has been repeatedly absent without leave from school and/or classes; or
- (e) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner

shall be guilty of serious misconduct.'

[19] The nature of the conduct set forth in ss (a) - (d) must of necessity assist in determining what constitutes 'disgraceful, improper or unbecoming' behaviour for purposes of ss (e). Quite clearly it must be of a particularly serious or aggravating nature before it can be classified as such. The kind of conduct envisaged by ss (e) is, in my view, something akin to immoral, promiscuous or shockingly inappropriate behaviour. An offence against the code of conduct could not remotely be classified as such behaviour. It is hence a blatant absurdity to categorise the growing of dreadlocks or wearing of a cap, even if it should be in conflict with the code of conduct, as serious misconduct. Even more so would this be the case if the real problem were not so much the dreadlocks and cap, but the applicant's so-called defiance of authority. Even if Mr Webster's suggestion, that this behaviour had caused disruption or uncertainty, were borne out by the evidence, it would still be a far cry from 'serious misconduct'.

[20] It follows that the first respondent did not even begin to apply its mind to the meaning and ambit of 'serious misconduct' as it appears in s 2(1)(e) of the said regulations. Its finding in this regard must therefore be set aside. The suspension must likewise be set aside.

Conclusion

[21] In the event I would make the following order:

1. The application succeeds.
2. The decision of the first respondent, finding the applicant guilty of serious

misconduct, is set aside.

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3. The suspension of the applicant by the first respondent is set aside.
4. No order is made as to the costs of the application.

Van Reenen J concurred.

Applicant's Attorneys: *Lawyers for Human Rights*, Malmesbury; *Murphy, Wallace, Slabbert*, Cape Town.
