

**HAJJAH HALIMATUSSAADIAH BINTI
HAJI KAMARUDDIN**

v.

**PUBLIC SERVICES COMMISSION,
MALAYSIA & ANOR.**

SUPREME COURT, KUALA LUMPUR
TUN DATO' SERI HAJI ABDUL HAMID
BIN HAJI OMAR LP,
TAN SRI DATUK EDGAR JOSEPH JR. SCJ,
DATO' MOHAMED DZAIDDIN BIN HAJI
ABDULLAH SCJ
[CIVIL APPEAL NO. 01-05 OF 1992]
5 AUGUST 1994

**ADMINISTRATIVE LAW: Dismissal from public
service - Public Officers (Conduct and Discipline)
(Chapter 'D') General Order 1980 regulations 24,
26 - Whether provisions thereof complied with -
Dress code for civil servants - Government Service
Circular No. 2 of 1985 - Effect of non-compliance
thereof.**

**CONSTITUTIONAL LAW: Federal Constitution
Art. 11(1) - Freedom of religion - Prohibition on
wearing a "purdah" as office attire - Government
Service Circular No. 2 of 1985 - Whether unconsti-
tutional - Whether circular contravened
appellant's constitutional right to practise Is-
lam.**

WORDS AND PHRASES: "purdah".

The appellant, a clerk attached to the office of the Perak State Legal Adviser, was dismissed by the respondents pursuant to a disciplinary action taken against her under the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980, for wearing a "purdah" as her office attire, in contravention of the dress code prescribed for civil servants by Service Circular No. 2 of 1985, which prohibited the wearing of such attire.

The appellant challenged the validity of her dismissal and argued before the High Court, *inter alia*, that para 2.2.1 of the said Service Circular was vague and uncertain and was null and void, being in contravention of Article 11(1) of the Federal Constitution and secondly, that in initiating disciplinary proceedings against her and in thereafter dismissing her from service, the respondents had failed to comply with the mandatory provisions of the said General Order 'D'. The learned Judge ruled in favour of the respondents on both issues and consequently

a held that the dismissal was proper and valid. The appellant hence appealed.

Before the Supreme Court the primary issues that arose were:

- b* (1) Whether in dismissing the appellant the respondents had acted fairly and had strictly complied with the provisions of the General Order 'D'.
- c* (2) Whether the wearing of a purdah is an Islamic injunction which ought to be strictly followed by Muslim women.
- c* (3) Whether paragraph 2.2.1 of the circular in question, in prohibiting the wearing of such attire, had infringed the appellant's constitutional right to practise her Muslim religion.

Held:

d [1] The procedure adopted by the Chairman of the Disciplinary Board and the PSC followed strictly Orders 24 and 26 of the said General Order "D". Doubtless, the PSC had acted fairly and properly against the appellant by giving her every opportunity of being heard. It is also clear that it was only after due consideration, that the PSC decided on 19 November 1986 to dismiss the appellant from service. There is thus no basis to say that the decision-making process herein was in any way flawed or that O. 24 or O. 26 aforesaid had not been strictly followed.

e [2] The contention that the said Service Circular was vague, unreasonable and unlawful and that the appellant was not obliged to comply with it because the "prohibited" dress did not refer to the word "purdah" cannot be sustained. There is no ambiguity in the meaning of the said paragraph 2.2.1. That paragraph clearly is intended to apply to all lady officers in the public service who are required to wear during office hours suitable and presentable attire except jeans, slacks, shorts and any attire covering face. In the context of paragraph 2.2.1, "purdah" as worn by the appellant would come within the meaning of "any attire covering face". On the facts it could not therefore be said that the circular or the paragraph in question was unclear to the appellant or that she could not understand its meaning or purpose.

f [3] The directive in Service Circular No. 2 of 1985 prohibiting the wearing of an attire covering the face during work does not affect the

g

h

i

constitutional right of the appellant to practice her religion. Islam as a religion does not prohibit a Muslim woman from wearing, nor requires her to wear a purdah. The wearing of purdah is not an Islamic injunction which must be followed strictly. In the premises, the wearing of purdah has nothing to do with the appellant's constitutional right to profess and practice her Muslim religion.

[Appeal dismissed].

[Bahasa Malaysia Translation of Headnote]

UNDANG-UNDANG PENTADBIRAN: Pemecatan daripada perkhidmatan awam-Perintah Am Pegawai-Pegawai Awam 1980 (Kelakuan & Disiplin) (Bab "D") Peraturan 24, 26 - Samada peruntukannya dipatuhi - Tatatertib Pakaian untuk pegawai-pegawai perkhidmatan awam - Pekeliling Perkhidmatan Kerajaan No. 2 Tahun 1985 - Kesan-kesan ketakpatuhannya.

UNDANG-UNDANG PERLEMBAGAAN: Perlembagaan Persekutuan Per.11(1) Kebebasan Ugama - Larangan atas pemakaian "purdah" sebagai pakaian pejabat - Pekeliling Perkhidmatan Kerajaan No. 2 Tahun 1985 - Samada tidak berperlembagaan - Samada Pekeliling melanggar hak-hak perlembagaan perayu untuk mengamalkan Islam.

PERKATAAN & ISTILAH: "purdah"

Perayu, seorang kerani yang berkhidmat dengan Pejabat Penasihat Undang-Undang Negeri Perak, telah dipecat oleh responden selaras dengan satu tindakan disiplin terhadapnya di bawah Perintah Am Pegawai-Pegawai Perkhidmatan Awam (Kelakuan & Disiplin) (Bab "D") 1980, kerana memakai purdah sebagai pakaian pejabatnya yang melanggar tata tertib pakaian yang ditentukan bagi pegawai-pegawai perkhidmatan awam oleh Pekeliling Perkhidmatan No. 2 Tahun 1985 yang mana melarang pemakaian pakaian sedemikian.

Perayu mencabar keesahan pemecatannya dan berhujah di hadapan Mahkamah Tinggi, antara lainnya, bahawa perenggan 2.2.1 Pekeliling Perkhidmatan tersebut adalah tidak jelas dan tidak dapat dipastikan serta adalah batal dan tak sah, sebagai melanggar Perkara 11(1) Perlembagaan Persekutuan dan keduanya, dalam memulakan prosiding disiplin terhadapnya dan selepas itu memecatnya dari perkhidmatan, responden telah gagal mematuhi peruntukan mandatori Perintah Am "D"

a tersebut. Tuan Hakim yang bijaksana membuat keputusan yang memihak kepada responden atas kedua-dua isu dan berikutan itu memutuskan bahawa pemecatan tersebut adalah betul dan sah. Perayu kemudian membuat rayuan.

b Di hadapan Mahkamah Agung isu-isu utama yang terbit adalah:

(1) Samada dalam memecat perayu, responden telah bertindak secara adilnya dan telah sesungguhnya mematuhi peruntukan Perintah Am "D".

c (2) Samada pemakaian purdah adalah satu injuksi Islam yang mana harus diikuti dengan sesungguhnya oleh wanita-wanita Islam.

d (3) Samada perenggan 2.2.1 Pekeliling yang dipersoalkan, dalam melarang pemakaian pakaian yang sedemikian, telah menjejaskan hak-hak perlembagaan perayu untuk mengamalkan agama Islamnya.

Diputuskan:

e [1] Prosedur yang diterima-pakai oleh Pengerusi Lembaga Disiplin dan Pesuruhjaya Perkhidmatan Awam (PPA) telah sesungguhnya mengikut Perintah-Perintah 24 & 26 Perintah Am "D". Jelasnya PPA telah bertindak secara adil dan wajar terhadap perayu dengan memberikannya setiap peluang untuk didengar. Adalah juga jelas bahawa selepas pertimbangan yang wajar, barulah PPA memutuskan pada 19 November 1986 untuk memecat perayu dari perkhidmatan. Dengan itu tidak berasas untuk menyatakan bahawa proses membuat keputusan di sini adalah tidak sempurna atau bahawa P.24 atau P.26 yang tersebut di atas telah tidak diikuti dengan sesungguhnya.

f g h i [2] Penegasan bahawa Pekeliling Perkhidmatan tersebut adalah tidak jelas, tidak wajar dan menyalahi undang-undang dan bahawa perayu tidak berkewajipan untuk mematuhi kerana pakaian yang "dilarang" tidak merujuk kepada perkataan "purdah" tidak dapat dibenarkan. Tidak terdapat ketaksahan dalam maksud perenggan 2.2.1 tersebut. Bahawa perenggan tersebut dengan jelas bertujuan untuk dipakai kepada pegawai-pegawai wanita dalam perkhidmatan awam yang dikehendaki memakai pada waktu pejabat pakaian yang sesuai dan wajar melainkan seluar

jean, slack, dan seluar pendek dan apa-apa pakaian yang menutupi muka. Dalam konteks perenggan 2.2.1 purdah seperti yang dipakai oleh perayu akan tergulung dalam maksud "apa-apa pakaian yang menutupi muka". Berdasarkan fakta-fakta tersebut ianya dengan itu tidak boleh dikatakan bahawa pekeliling atau perenggan yang dipersoalkan adalah tidak jelas kepada perayu atau bahawa beliau tidak dapat memahami maksud atau tujuannya.

[3] Arahan dalam Pekeliling Perkhidmatan No. 2 Tahun 1985 yang melarang pemakaian pakaian yang menutupi muka ketika bekerja tidak menjejaskan hak-hak perlembagaan perayu untuk mengamalkan ugamanya. Islam merupakan agama yang tidak melarang wanita Islam daripada memakai mahu pun menghendakinya memakai purdah. Pemakaian purdah bukannya satu injunksi Islam yang harus diikuti dengan sesungguhnya. Dalam keadaan yang sedemikian, pemakaian purdah tidak berkaitan dengan hak-hak perlembagaan perayu untuk mengamalkan dan menganuti agama Islamnya.

[Rayuan ditolak].

Cases referred to:

Shamsiah bte Ahmad Sham v. Public Services Commission, Malaysia [1990] 3 MLJ 364 (refd)
Abdul Rahman bin Isa v. Public Service Commission, Malaysia [1991] 2 MLJ 240 (refd)
Bugdaycay v. Secretary of State for the Home Department [1987] 1 All ER 940 (refd)
Che Omar bin Che Soh v. Public Prosecutor [1988] 2 MLJ 55 (refd)

Legislation referred to:

Federal Constitution, Articles 11(1), (5), 144, Clause (5B)
Public Services Disciplinary Board Regulations 1972, Reg. 3(2)
Public Officers (Conduct & Discipline) Chapter 'D' General Order 1980, O. 4(2)(g), (i), O. 24, O. 26(1), (2), (4), O. 27(a), (b)

Other sources referred to:

On The Islamic Hijab, Murtaza Mutahhari, p. 15
Kamus Dewan, New Edition
The Holy Quran - Text, Translation and Commentary, Abdullah Yusuf Ali, Sura 24 (An Nuur), verses 27-34, Sura 33 (Al Ahzab), verses 53 & 59
The Islamic Law and Constitution, S. Abdul A'la Maududi, 7th Edn., March 1980

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.

For the respondents - Lim Heng Seng, Senior Federal Counsel

JUDGMENT

Mohamed Dzaidin Bin Haji Abdullah SCJ:

The appellant was formerly a clerk attached to the office of the Perak State Legal Adviser, Ipoh, until her dismissal from public service on 16 December 1986. It was a well-known fact that the appellant had been wearing a black "purdah" as part of her daily attire during officer hours. The "purdah" covered the whole of her body from head to foot, leaving only a slit in front of her face, exposing her pair of eyes.

On 18 February 1985 the Government of Malaysia issued Service Circular No. 2 of 1985 pertaining to dress code for civil servants. Under paragraph 2.2.1, women officers were prohibited from wearing jeans, slacks, shorts and any dress which covered the face during office hours. The service circular applied to all the staff of the State Legal Adviser's office, Ipoh. In the case of the appellant, her attention was particularly drawn to it whereby she was advised by the then State Legal Adviser not to wear any clothes which covered her face. Unfortunately, she took no notice of the advice and persisted in wearing the same attire during work on the ground that as a Muslim, she was required by the Quran and hadith of the Prophet to cover her face and not to expose it in public. In the result, the Chairman of the Disciplinary Board for Group C officers at the Attorney-General's chambers (the Disciplinary Board) decided, after considering the report on the appellant's refusal to comply with the circular, to take disciplinary action against her with a view to dismissal from service. However, in view of regulation 3(2) of the Public Services Disciplinary Board Regulations 1972, the Chairman of the Disciplinary Board had no power of dismissal. The Disciplinary Board then wrote to the secretary of the PSC on 24 August 1985 informing the latter of the Board's decision, the relevant paragraph 1 of which stated:

Saya adalah diarah dengan hormatnya memaklumkan bahawa Jabatan ini ada menerima laporan bahawa Cik Halimatusaadia bte Hj. Kamaruddin, Pegawai Kerani Am di Pejabat Penasihat Undang-Undang Negeri Perak, Ipoh, Perak, telah melanggar peraturan pakaian semasa bekerja sebagaimana ditetapkan dibawah Pekeliling Perkhidmatan Bil. 2 Tahun 1985. Setelah meneliti laporan tersebut dan semua maklumat yang berkaitan, maka Pengerusi Lembaga Tatatertib Jawatan Kumpulan 'C', Jabatan

**Hajjah Halimatussaadiah Binti Haji Kamaruddin v.
Public Services Commission, Malaysia & Anor.**

[1994] 3 CLJ

Mohamed Dzaidin Bin Haji Abdullah SCJ

535

Peguam Negara, berpuashati bahawa Pegawai ini seharusnya dikenakan tindakan tatatertib dengan tujuan buang kerja.

About a year later, on 5 August 1986, the PSC sent a show cause letter to the appellant why she should not be dismissed from service. The material part of the letter stated:

Puan

Kenyataan alasan-alasan membuang kerja

Saya memaklumkan iaitu berikutan dengan laporan yang diterima, maka Suruhanjaya ini sebagai pihak berkuasa tatatertib yang berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja terhadap puan di bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 atas pertuduhan berikut:

Bahawa Puan Halimatussaadiah bte Haji Kamaruddin yang bertugas sebagai pegawai kerani am, Jabatan Penasihat Undang-Undang Negeri Perak, Ipoh telah didapati mulai 18 April 1985 hingga sekarang masih memakai pakaian yang menutup muka semasa bekerja di pejabat walaupun ianya bertentangan dengan Pekeliling Perkhidmatan Bil 2 Tahun 1985 sebagaimana yang telah dimaklumkan kepada puan melalui Edaran Penasihat Undang-Undang Negeri Perak bertarikh 18 April 1985. Perbuatan puan itu adalah satu kesalahan yang tidak bertanggungjawab dan engkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai engkar perintah iaitu bertentangan dengan perintah am 4(2)(g) dan 4(2)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

2. Mengikut kehendak perintah am 26(2), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980, puan adalah diminta mengemukakan:

- (a) jawapan kepada pertuduhan ini; dan
- (b) hujah-hujah sebagai pembelaan diri mengapa tindakan tatatertib buang kerja tidak boleh diambil terhadap puan sekarang.

Jawapan dan hujah-hujah pembelaan diri puan itu hendaklah dikemukakan kepada Setiausaha, Suruhanjaya Perkhidmatan Awam melalui Ketua Jabatan puan dalam tempoh dua puluh (20) hari daripada tarikh puan menerima surat ini. Sekiranya puan

a tidak memberi sebarang jawapan dalam tempoh masa yang ditetapkan itu, puan akan dianggap sebagai tidak hendak mengemukakan sebarang pembelaan diri dan perkara ini akan diputuskan atas keterangan-keterangan yang ada sekarang ini sahaja.

3. Sila puan akui penerimaan surat ini.

b In response to the above letter, the appellant sent a 21-page reply giving her reasons why she would continue to wear the "purdah", quoting, *inter alia*, verses from the Quran and hadith.

Finally, on 10 November 1986, the PSC decided to dismiss her from service under the Public Officers (Conduct & Discipline) Chapter 'D' General Orders 1980 (G.O. 'D') regulation 26. The letter of dismissal dated 16 December 1986 stated as follows:

Puan,

d Keputusan Lembaga Tatatertib Suruhanjaya Perkhidmatan Awam

Saya diarah menarik perhatian kepada surat Suruhanjaya ini bil SPA Sulit 80223/3/(16) bertarikh 5 August 1986 meminta puan mengemukakan hujah-hujah bagi membebaskan diri puan daripada tindakan tatatertib dengan tujuan buang kerja yang akan diambil ke atas puan di bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980. Puan telah mengemukakan jawapan sebagai pembelaan diri menerusi surat puan bertarikh 30 August 1986.

f 2. Dimaklumkan bahawa Suruhanjaya Perkhidmatan Awam dalam mesyuaratnya yang telah diadakan pada 10 November 1986 setelah menimbang dengan teliti kes puan itu pada keseluruhannya telah memutuskan bahawa puan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta.

g On 26 October 1987, the appellant filed a writ against the PSC in the High Court Kuala Lumpur challenging the validity of her dismissal by the PSC and seeking the following declarations:

- (a) that paragraph 2.2.1 of the said service circular which in effect prohibited the wearing of the "purdah" was null and void, being in contravention of Article 11(1) of the Federal Constitution;
- (b) that her purported dismissal from service was null and void, inoperative and of no consequence;

i (c) and for an order for her reinstatement, account to be taken of her salaries, emolu-

- ments, benefits and for other consequential loss;
- (d) costs; and
 - (e) any further or other reliefs.

In the High Court, the following grounds were canvassed by the appellant:

- (a) There were material irregularities in the procedure adopted by the first respondent in attempting to initiate disciplinary proceedings against her in that the first respondent should have stated the grounds upon which it was intended to take disciplinary action and not preferred a charge against her as contained in the show cause letter dated 5 August 1986. There is no such thing as requesting a public officer to show cause why disciplinary proceedings should not be taken against him. Disciplinary proceedings had in fact already commenced when it was decided to proceed against her under reg. 26(1). She further pleaded that due to the said material irregularities mentioned hereinbefore, she was absolved from having to reply to the said show cause letter.
- (b) The ground upon which her purported dismissal was based was in contravention of her constitutional right to practise the Islamic religion as contained in the Quran, hadith and the teaching of the Ulama and Hukum Islam. Her use of the purdah during office hours did not conflict with her duties.
- (c) The first respondent had failed to comply with the mandatory provisions of General Order 24 of the Public Officers (Conduct and Discipline) (Chapter 'D') General Orders 1980.
- (d) The first respondent had breached the rules of natural justice in failing to inform her of the complaint against her.
- (e) Paragraph 2.2.1 of the Service Circular No. 2 of 1985 was vague and uncertain.
- (f) The first respondent had failed to make a finding of guilt before imposing the punishment of dismissal, which was procedurally defective.

The High Court dismissed the appellant's action with costs. Hence, this appeal.

Before us, the appellant challenged the correctness of the learned Judge's decision on five

- a grounds. The first ground was on the non-compliance with the mandatory requirements of O. 24 of G.O. 'D'. The complaint of the appellant was that the learned Judge erred in not concluding that the decision-making process leading to her dismissal was flawed because of the non-compliance with the mandatory requirements of O. 24 G.O. 'D'.
- b

Order 24 of General Order 'D' states:

- c In every case of an alleged breach of discipline by any officer except as provided for under General Order 27(a) and (b), the chairman of the appropriate disciplinary authority shall, in the first instance, before commencing any disciplinary proceeding in the matter, consider whether the breach of discipline complained of is of a nature which merits a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank.
- d Encik Karpal Singh, for the appellant, repeated the same complaint with respect to this ground, as he did before the learned Judge in the Court below. First, Counsel submitted that the Attorney-General's Chambers was not the appropriate disciplinary authority under O. 24. On the contrary, Counsel contended that the PSC was the appropriate disciplinary authority as in the case of *Shamsiah bte Ahmad Sham v. Public Services Commission, Malaysia* [1990] 3 MLJ 364. In that case, Shamsiah, a book-binder with the Government Printers Department, Kuala Lumpur, was dismissed by the PSC after she was found guilty of negligence and dereliction of duty. The disciplinary action was initiated by the PSC. Secondly, the letter dated 24 August 1985 addressed to the secretary of the first respondent from the Attorney-General's chambers was not sufficient to comply with the mandatory requirements of O. 24 G.O.'D'. The decision to dismiss the appellant should have been made by the PSC. Therefore, if the said O. 24 was not complied with, the decision of the PSC was bad and the appellant's dismissal was null and void. Counsel relied on a High Court decision in *Abdul Rahman bin Isa v. Public Service Commission, Malaysia* [1991] 2 MLJ 240. We note that the above issues were dealt with by the learned Judge in his grounds of decision, reported in [1991] 1 MLJ 513 at p. 522, 523. For the sake of clarity, we quote the following relevant passages from the judgment:
- e
- f
- g
- h

- i I note that the chairman of the Disciplinary Board for 'officers in Group C' in the Attorney General's chambers who is the Attorney Gen-

**Hajjah Halimatussaadiah Binti Haji Kamaruddin v.
Public Services Commission, Malaysia & Anor.**

[1994] 3 CLJ

Mohamed Dzaiddin Bin Haji Abdullah SCJ

537

eral himself, as provided under para 1(v) of the Regulations, had already made a decision under O. 24 of GO 'D' that this was a case which merited a disciplinary action with a view to dismissal. Since the definition of 'disciplinary authority' includes 'a board of officers' appointed by the Yang di-Pertuan Agong under CI (5B) of art 144 of the Federal Constitution, I find the provision of order 24 of GO 'D' was sufficiently complied with when a letter dated 24 August 1985 addressed to the secretary of the PSC signed by the administrative officer in the Attorney General's department under direction to convey that decision made under O. 24 of the GO 'D' ...

The reason why this Disciplinary Board for officers in Group C sent this request to the PSC is because the board under reg. 3(2) of the Regulations did not have the power of dismissal. Nevertheless, the Chairman of the disciplinary authority (or the Board) had complied with O. 24 of GO 'D'. The disciplinary action against the plaintiff started when a report was received by the Disciplinary Board for Group C officers whose Chairman, having considered the report, was of the view that the breach of disciplinary offence committed by the plaintiff merited the punishment of dismissal and the subsequent action of the PSC is a continuation of the action begun by the Disciplinary Board for officers in Group C of the Attorney General's chambers. In any event the Chairman of the PSC must have decided this question under O. 24 of GO 'D' or else there would have been no further proceedings taken against the plaintiff by the PSC. His decision under O. 24 of GO 'D' is not required to be conveyed to the plaintiff or to any one else. The purpose of O. 24 of the GO 'D' is quite clear. When the Chairman of the appropriate Disciplinary Board receives the report, he is not required to convene the Board meeting. It is enough that he considers the gravity of the alleged disciplinary offence committed, and decides whether under the circumstances, proceedings should be taken with a view to dismissal or not.

Needless to say, we are in complete agreement with the reasoning and conclusions of the learned Judge. In addition, we would say that upon considering the entire decision-making process in this case, we are satisfied that the PSC had acted fairly and properly against the appellant, giving her every opportunity of being heard. In this regard, a passage from the speeches of Lord Bridge and Lord Templeman in *Bugdaycay v. Secretary of State for the Home Department* [1987] 1 All ER 940 HL may be usefully recalled.

a Lord Bridge stated that Courts were entitled within limits:

to submit an administrative decision to a more rigorous examination, to ensure that it is in no way flawed, according to the gravity of the issue which the decision determines. The most fundamental of all human rights is the individual's right to life and when an administrative decision under challenge is said to be one which may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny.

And Lord Templeman said this:

c Where the result of a flawed decision may imperil life or liberty a special responsibility lies on the Court in the examination of the decision-making process.

The procedure adopted by the Chairman of the Disciplinary Board and the PSC, in our view, followed strictly Orders 24 and 26 of GO 'D'. The appellant was given every opportunity to exculpate herself. It is clear from the evidence that the Chairman of the Disciplinary Board, upon receipt of the report from the State Legal Adviser, Perak, of the appellant's refusal to comply with the said service circular, decided under O. 24 of GO 'D' that proceedings for dismissal should be taken against her. The Chairman then referred the matter to the PSC for further action. The PSC accordingly wrote to the appellant a show cause letter which included a charge as to why she should not be dismissed from public service. The appellant then gave a reply in the form of an exculpatory representation, giving her reasons why she would continue to wear the purdah. Order 26(4) states that if the officer furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. After due consideration, the PSC decided on 10 November 1986 to dismiss her from service. The letter of dismissal was sent to her on 16 December 1986. In the result, the appellant's first ground must fail.

h The second ground of appeal concerned paragraph 2.2.1 of Service Circular No. 2 of 1985. It was contended by Counsel that the said circular was vague and uncertain because the "prohibited" dress did not refer to, nor mention the word "purdah". In such circumstances, the appellant

i

was not obliged to comply with it. Therefore the learned Judge should have held that the service circular was an unlawful and unreasonable order. The circular provides:

2.2 Pakaian Wanita

2.2.1 Pakaian Kebangsaan atau pakaian kaum masing-masing yang sesuai dipakai semasa bekerja. "Jeans", "slacks" seluar pendek **dan apa-apa pakaian yang menutup muka tidak boleh dipakai semasa bekerja.**

(Emphasis added)

The English translation reads as follows:

Women's Attire

National Dress or dress of respective communities suitable for wearing during work. However, "jeans", "slacks", shorts and any dress covering the face are not permitted to be worn during work.

On a careful reading of this circular, we are satisfied that there is no ambiguity in the meaning of paragraph 2.2.1. Clearly, it is intended to apply to all lady officers in the public service who are required to wear during office hours suitable and presentable attire, such as National Dress or dresses of respective communities except jeans, slacks, shorts and any attire covering the face. According to DW1 of the Public Services Department, the intention of the provision of paragraph 2.2.1 was that a woman officer must not cover her face during office hours. In the context of paragraph 2.2.1, "purdah" as worn by the appellant would, in our opinion, come within the meaning of "pakaian yang menutup muka". "Purdah", according to **Kamus Dewan**, edisi baru, means:

1. kain (tirai) untuk menutup orang perempuan supaya tidak dapat dilihat;
2. kain (tirai) yang dipakai di muka perempuan (supaya jangan kelihatan).

Thus, the dictionary meaning of "purdah" is a cloth or curtain for keeping women from sight; veil, cloth to hide a woman's face. The next question is whether it could be said that the said circular was unclear to her or she did not understand its meaning or purpose. In our view, the answer is self-explained by her 21-page letter to the secretary of the PSC dated 30 August 1986. To all intent and purposes, the letter served as a written exculpatory representation giving grounds, in particular, why she should be allowed to wear the purdah. More-

a over, both the State Legal Adviser, Perak, and the senior officers from Pusat Islam, Jabatan Perdana Menteri, had met her to explain regarding the said circular and dissuaded her from wearing the purdah. For the above reasons, we do not think there is any substance in this ground.

b The third and fourth grounds concerned the broader issue of wearing purdah in the light of Article 11(1) of the Federal Constitution. Counsel submitted that by refusing to allow the appellant to wear purdah, her constitutional right under Article 11(1) to profess and practise her religion has been infringed. Secondly, as "Islam is a complete way of life" and wearing of purdah, according to Counsel, is a well-known Muslim habit, the learned Judge was wrong in not following the spirit and substance of a passage in the judgment of the Supreme Court in *Che Omar bin Che Soh v. Public Prosecutor* [1988] 2 MLJ 55, where it is stated:

There can be no doubt that Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial. This way of ordering the life with all the precepts and moral standards is based on divine guidance through his prophets and the last of such guidance is the Quran and the last messenger is Mohammad S.A.W. whose conduct and utterances are revered. (See S. Abdul A'la Maududi, **The Islamic Law and Constitution**, 7th Ed., March 1980).

e It is trite that Article 11(1) of the Constitution guarantees the freedom of religion, where every person has the right to profess and practise his religion. However, such right is not absolute as Article 11(5) provides that this article does not authorise any act contrary to any general law relating to public order, public health or morality. In the context of Service Circular 2 of 1985 prescribing the mode of dress and prohibiting the wearing of an attire covering the face by a lady officer in the public services during work, we are of the opinion that such prohibition does not affect her constitutional right to practise her religion. First, we accept the opinion of Dato' Mufti Wilayah Persekutuan that Islam as a religion does not prohibit a Muslim woman from wearing, nor requires her to wear a purdah. Secondly, there seem to be a myth or misconception by certain groups of Muslims in Malaysia regarding the wearing of purdah which covers the entire face except the eyes. They believe that

**Hajjah Halimatussaadiah Binti Haji Kamaruddin v.
Public Services Commission, Malaysia & Anor.**

[1994] 3 CLJ

Mohamed Dzaidin Bin Haji Abdullah SCJ

539

it is one of the Islamic injunctions which must be followed strictly. It is noted that purdah in its present form has not been specified in the Holy Quran. However, the Holy Quran uses the word "hijab" meaning a screen or covering. It seemed that Muslim women living at the time of the Holy Prophet (S.A.W.) to whom the Quran was revealed had made the wearing of the veil over their face as a regular part of their dress outside the house. Allah in his instruction to the Prophet (S.A.W.) ordered Muslim women to wear an outer garment called "jilbab, - plural jalabib" meaning a long gown covering the whole body or a cloak covering the neck and bosom. See: Sura 33 (Al Azzab) verses 53 and 59. According to **The Holy Quran -Text, Translation and Commentary** by Abdullah Yusuf Ali, in Sura 33 (Al Ahzab), verse 59, Allah directed the Prophet (S.A.W.) to tell his wives and daughters and those of his household, as well as the others to cover themselves with outer garments (jilbab, plural jalabib) when walking abroad, meaning when they were out in the open. The commentary further stated that this was intended to safeguard the position and dignity of the ladies of the Prophet's household and Muslim women generally. The object was not to restrict the liberty of women, but to protect them from harm and molestation under the conditions then existed in Medina.

In addition, it is instructive to quote two passages from a book entitled "**On The Islamic Hijab**" by Murtaza Mutahhari, published by the Islamic Propagation Organization, Iran, on the Islamic view regarding the covering of the face. At p. 15, the learned author stated:

The philosophy of the Islamic 'covering' depends on several things. Some of them are psychological and some relate to the home and the family. Others have sociological roots and some of them relate to raising the dignity of a woman and preventing her debasement.

The hijab in Islam is rooted in a more general and basic issue. That is, Islamic precepts aim at limiting all kinds of sexual enjoyment to the family and the marital environment within the bounds of marriage so that society is only a place for work and activity. It is opposite of the western system of the present era which mixes work with sexual enjoyment. Islam separates these two environments completely.

And added (at p. 71) that:

Islam did not make it obligatory to uncover the face. It said it is obligatory to cover the hair,

a not to display the face. Clearly, those nations which came to accept Islam were following their own customs because Islamic precepts did not say it was obligatory to display the face, except in the haram. Nor did they say it was forbidden to cover the face, it gave a choice. It left it up to the various nations to practise their own customs of hijab if they so desired.

b History shows that non-Arabs felt it was obligatory to cover the face. Thus this custom of covering the face, as we find it now, is not a custom of the Holy Prophet and the Imams.

c Thus based on the above quotations and the opinion of Dato' Mufti Wilayah Persekutuan on the wearing of purdah in Malaysia, we can safely conclude, as we do here, that the wearing of purdah has nothing to do with the appellant's constitutional right to profess and practise her Muslim religion. Accordingly, these grounds must fail.

d Finally, Counsel submitted that the learned Judge was wrong in rejecting the appellant's evidence that she was obliged to wear purdah on the ground of the probability of "fitnah" against her. According to her understanding of Sura 24 (An Nuur), verses 30 and 31 of the Holy Quran and the Hadith, a Muslim woman must always cover her face, except the eyes, to avoid a "fitnah".

e We have, however, examined the commentary on Sura 24 and discovered that this sura has something to do with reprobation of false slander (fitnah) about women. However, we find that there is a misconception on her part with regard to her interpretation of Sura 24 that she must not expose her body including her face. Otherwise, there would be "fitnah" against her. The message in verses 27-34 of Sura 24 seems to be that "privacy should be respected and the utmost decorum should be observed in dress and manners".

g (**The Holy Quran -Text, Translation and Commentary, supra**). In the circumstances, the learned Judge, relying on the opinion of Dato' Mufti, Wilayah Persekutuan, was right to reject this aspect of the appellant's evidence regarding the wearing of purdah.

h Therefore, upon considering all the issues canvassed before us and for reasons which we have given above, in our judgment, this appeal must, accordingly, be dismissed with costs. Deposit to be paid to the respondent to account of taxed costs.

i