

## **The Secretary, Ministry of Defence Vs. Babita Puniya & Ors.**

“One is not born, but become a woman”- *Simon de Beauvoir*

Article 14 of the Constitution embodies the general principles of equality before law and prohibits unreasonable discrimination between persons.

Clauses (1) and (2) of Article 16 lays down the general rule of equality of opportunity or appointment under the state and that no citizen can be discriminated against or be ineligible for any employment or office under the state on grounds only of religion, race, caste, **sex**, descent, place of birth or residence.

*A quest for equality of opportunity for women seeking Permanent Commissions in the Indian Army forms the rationale of the instant case.*

### **IN THE SUPREME COURT OF INDIA**

(Civil Appellate Jurisdiction)

The Secretary, Ministry of Defence – Petitioner(s)

Versus

Babita Puniya & Ors- Respondent(s)

**DATE OF JUDGEEMENT-** 17 Feb 2020

**BENCH -** Hon’ble Dr. Chandrachud, Hemant Gupta

### **BRIEF FACTS OF THE CASE**

The lead appeal originated in a batch of Writ Petitions which were instituted before the High Court of Delhi in 2003 and 2006. Section 12 of the Army Act 1950 provides - No female shall be eligible for enrolment or employment in the regular Army, except as the Central Government may, by notification in the Official Gazette, specify in this behalf.

30<sup>th</sup> January 1992

Pursuant to the power conferred by section 12, the Central Government issued notification making women eligible for appointment as officers in the specific branches/cadres of the Army. The provision of induction of women which was initially five years was extended gradually for another five years and by a notification published in official gazette on **19<sup>th</sup> November 2005**, the tenure of SSC male officers and WSES officers was extended up to fourteen years;

In 2003

Babita Puniya instituted a writ petition in the nature of Public Interest Litigation before the High Court of Delhi, to grant women engaged on Short Service Commission in the Army

seeking parity with their male counterparts in obtaining Permanent Commissions. Various other petitions seeking the same were clubbed with this petition.

During the course of the proceedings, two circulars were issued on 20<sup>th</sup> July 2006, conveying the sanction of the President of India regarding the grant of SSCs both on the technical and non-technical side to women officers.

16<sup>th</sup> October 2006

Apart from the PIL which was instituted before the High Court of Delhi, a writ petition was filed by Major Leena Gurav, primarily to challenge the terms and conditions of service imposed by the circulars dated 20 July 2006 and for seeking the grant of PCs for women officers.

On 26 September 2008

The MoD issued a circular envisaging the grant of PCs prospectively to SSC women officers in the JAG department and the AEC. The circular was challenged before the Delhi High Court by Major Sandhya Yadav and others on the ground that it granted PCs only prospectively and only to certain specified cadres.

12<sup>th</sup> March 2010

The Writ Petitions were heard together by the Division Bench of the Delhi High Court. By a judgment dated 12 March 2010, the High Court issued directions, which were not complied with, hence the present appeal and the Supreme Court upheld the order of High Court.

25<sup>th</sup> February 2019

The government issued guidelines that permanent commission will be granted to the women officers but prospectively and commissioned that only those women will be eligible who commissioned after this order is notified keeping the serving officers out of the ambit of the permanent commission. It granted a permanent commission to new SSC officers in eight combat roles.

## **ISSUES**

Issues raised henceforth before the Supreme Court are:

1. Whether the guidelines issued by Central Government through notification dated 15<sup>th</sup> February 2019 should be upheld?
2. Whether women appointed under SSCs should be granted equal opportunity of Permanent commission as their male counterparts?

## **CONTENTIONS**

ON BEHALF OF PETITIONER

1. It is contended that section 10 of the 1950 Act, confers the discretion on the President with regard to the award of commission on any person in Army. Further Section 12 of the Act confers discretionary power on the Central government with regard to enrolment or employment of women officers in regular Army. The ability to give commission is placed with the President and no mandamus can be asserted from the court.
2. The reason for not providing women PCs, who are already in service is that after 14 years they have limited year of service left and training them would result into a loss of resources.
3. Substantial benefits of pensionable service have already been granted to women via order dated 15<sup>th</sup> February 2019, providing women would be allowed to work if they have completed 14 years of service but not 20 years to attain pension without scrutiny.
4. The issue related to recruitment and grant of PCs have been constituted as policy decision and executive have exclusive domain over it, this provision has been protected by Article 33 as exception to the fundamental rights provide under Part III of the constitution. This Article empowers the Parliament to restrict/abrogate by law, fundamental rights in the application to the members of armed forces. The scope of judicial review in command and tenure has been limited as held in case of *Union of India Vs PK Chaudhary*.
5. It was submitted that restrictions on employability of women in Army are “Inescapable due to peculiar operational compulsions of the Army”, also women are not fit because of their physiological differences with men.
6. There has been no discrimination since extra benefits are available like maternity leave which their male counterparts are deprived off.

#### ON BEHALF OF RESPONDENTS

1. There was no stay on the implementation of judgement of Delhi High Court and no steps were taken to grant PCs to women officers in the Army.
2. It was submitted that women officers are considered effective workforce until they complete their 14 years of service during the period the nature of duties remain same hence the contention of Union of India hold no water.

3. It was submitted that object of restriction provided under Article 33 is to ensure the proper discharge of their duties and maintenance of discipline amongst them and not for the discrimination.
4. Despite the present batch of appeal, the women officers of all ages are still being posted to sensitive area, field area, head- quarter and warfare zones without being commissioned into the combat arms. Thirty percent of all women officers are posted in the field (combat zones).
5. Women Officers have been left in lurch without pensionary and promotional benefits at par with their male counterparts, while both undergo same training process.
6. Order issued by Government dated 25<sup>th</sup> February 2019, for the PC has only prospective effect.

## JUDGEMENT

1. Chandrachud J. said the impact of Article 33 is to enable Parliament to limit or abrogate the fundamental rights in their application to the members of the Armed forces. But such a restriction or abrogation must be by law. Moreover, the restriction or abrogation must be enacted to ensure the proper discharge of duties and the maintenance of discipline.
2. The court said that the policy decision of the government is the right of the women officer to equality of opportunity. One facet of which is the principle of non-discrimination embodied under Article 15(1) and the other is the principle of opportunity in matter of public employment embodied in Art 16(1).
3. SC done away with all the discrimination on the basis of year of service for rant of PC in 10 streams of combat support arms and services, bringing them on par with male officers also removed the restriction of women officers only being allowed to serve in staff appointments. Command is now open to women
4. Upholding the 2010 Delhi High Court Verdict ruled that women officers who joined the Indian army through SSC are entitled to PCs.
5. *The submissions advanced in the note tendered to this Court are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Underlying the statement that it is a “greater challenge” for women officers to meet the hazards of service “owing to **their prolonged absence during pregnancy, motherhood and domestic obligations** towards their children and families” is a **strong stereotype** which assumes that domestic obligations rest solely on women.*

6. The expression “in various staff appointments only” in para 5 and “on staff appointments only” in para 6 shall not be enforced; with respect to PC of women.
7. It is necessary for this Court to clarify that the prospective application of the decision does not mean that it would only apply to women officers who have been appointed as SSCs officers after the date of the decision but also women who are currently appointed under SSC.
8. Those who served 20 years or more whether or not they got a PC, will be entitled to pension benefits.
9. The policy decision which has been taken by the government allowing for the grant of PCs to SSCs women officers in all ten streams where women had been granted SSC only in the Indian Army were accepted by the court with subject to some conditions.

## **CONCLUSION**

Hence, the Hon'ble Supreme Court has rightly delivered this judgement in favour of women by granting them permanent commission at par with male counterparts. This a hammer on the face of stereotypes who don't consider women equal to men. However, India has made commendable progress in the development, yet the gender disparities persist against the economic growth of the country. Constitution grants equality to women, prohibits discrimination before law but the personal laws resulting in dual system allows the discrimination against women. Moreover, SC should be vigilant in looking after the conditions of women engaged in other workforce and committees should be made for that regard.