

Bilju A.T. Vs. Uoi and ors

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Court : Delhi

Decided On : May-24-2013

Judge : Gita Mittal

Appellant : Bilju A.T.

Respondent : Uoi and ors

Advocate for Def. : Mr. Ashish Nischal

Advocate for Pet/Ap. : Ms. Rekha Palli, Mr. Ashish Nishchal

Judgement :

\$~18 & 19 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

24. h May, 2013 % + W.P.(C) 8744/2011 BILJU A.T. Through: Petitioner Ms. Rekha Palli, Ms.Punam Singh and Ms.Amrita Prakash, Advs. versus UOI AND ORS Through: + Respondents Mr. Ashish Nishchal, Adv. W.P.(C) 1368/2012 MANORMA SINGH AND ANR Petitioners Through: Ms. Rekha Palli, Ms.Punam Singh and Ms.Amrita Prakash, Advs. versus UOI AND ORS Through: Respondents Mr. Ashish Nishchal, Adv. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MR. JUSTICE J.R. MIDHA 1 In the year 1979, Justice V.R. Krishna Iyer in the judgment reported at (1979) 4 SCC 260.Miss C.B. Muthamma, I.F.S. v. Union of India and others stated thus: This writ petition by Miss Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality.

The credibility of constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievances of Miss Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess... The present petition illustrates that despite the passage of 34 years since this pronouncement and more than 65 years of independence later, the position remains the same.

2. By way of instant writ petition, the petitioners have challenged Rule 5(A)(d) of the CRPF Rules, 1995 which is framed under the provision of Section 18 of the CRPF Act, 1949, whereby a separate cadre for women incumbents has been prescribed upto the rank of Inspector for the Mahila Battalion. It is pointed out that this Rule was incorporated by virtue of a statutory amendment effected on 23rd August, 1989.

3. The challenge, as premised by the petitioner, inter alia, is on the grounds of violation of Article 14, 16 and 21 of the Constitution of India. The petitioners also pray for issuance of a writ of mandamus to the respondent to maintain a common seniority list for SI/GD Male as well as Female (Mahila) and to grant promotion to the petitioners to the ranks of Assistant Commandant at par with their male counter parts who were appointed pursuant to the same selection process conducted by the Staff Selection Commission and assigned the same duties, with all consequential benefits.

4. For the purposes of convenience, we may first set out the Rule which has been assailed before us. Rule 5 (A)(d):

5. There shall be a separate cadre upto the rank of Inspector for Mahila Battalion under the existing rules and regulations. The facts giving rise to these writ petitions are briefly noticed hereafter. The petitioners participated in a combined Preliminary (Graduate Level) Examination, 2000 conducted on 27 th February, 2000 by the Staff Selection Commission. This examination was followed by an advertisement

published in the Employment News dated 5-11, August, 2000 inviting applications from candidates who had qualified in the Preliminary Examination for Combined Main (Graduate Level) Examination 2000. As per the advertisement, the Main examination was to be held on 29th October, 2000 and 3rd 5th November, 2000. The selection process was being undertaken for the post of the Sub Inspectors in Central Police Organisations in the pay scale of Rs.5500-9000 alongwith some other posts. We may note that the Central Police Organisation includes the Central Reserve Police Force (CRPF), the Border Security Force (BSF), Indo Tibetan Border Police (ITBP) and Central Industrial Security Force (CISF).

6. It is noteworthy that no distinction or separation was drawn so far as the applications which were invited from the prospective male candidates or prospective female candidates. The advertisement applied equally to both the genders. The advertisement also contains the same prescription with regard to age limits, educational qualifications and reservations etc.

7. It is undisputed that the petitioners successfully participated in the selection process resulting in issuance of offers for appointment.

8. All the writ petitioners were appointed pursuant to identical offers of appointment. So far as Bilju A.T., the writ petitioner No.1 in WP(C) No.8744/2011 is concerned, an offer of appointment dated 23rd January, 2003 was issued to her.

9. Ms. Rekha Palli, learned counsel for the petitioners, points out that this offer of appointment dated 23rd January, 2003 was addressed to not only petitioner No.1 but also to another lady candidate (namely, Smt. Sheena Shekhar) as well as four males candidates. The terms and conditions on which the appointment was made were identical and no distinction was drawn as to whether the candidate was a male or the female candidate.

10. In Clause 3(e) of the offer of appointment letter, the respondent has stipulated that on joining this organization you will be governed by CRPF Act, 1949 and CRPF Rules, 1955 as amended from time to time. It was also stipulated that the selected candidates were required to undergo basic training of the duration of 48 weeks after reporting at the training institution.

11. We may also note the facts of petitioner No. 4 (newly added) as well as the writ petitioners in WP(C) No.1368/2012. It has been pointed out that these petitioners were appointed along with Inspector Bilju A.T. in the year 2003 on identical terms and conditions; had also undergone the Directly Appointed Subordinate Officers Course as well as the Platoons Commander Refresher Course along with other batchmates (both male and female). After their appointment and completion of requisite course, the two women petitioners in WP(C) No.1368/2012 were posted in the Special Protection Group in the year 2005. These writ petitioners have claimed that they have till date never been posted to any Mahila Battalion and continue to serve the Special Protection Group. This position is not disputed by the respondent.

12. A perusal of the counter affidavits filed by the respondents would show that no distinction is drawn between the male and female candidates in respect of the terms and conditions for the appointment of any of the petitioners in either of the writ petitions.

13. The respondents have also not made any distinction in the training which the candidates, whether male or female, were required to undergo.

14. It is material to note that at no point of time the respondent indicated to the petitioners that there was any separation in the seniority list women (Mahila) SI/GD viz a viz their male counter parts. After joining the service, all the petitioners underwent the Directly Appointed Sub ordinate Officers Course as well as Platoons Commander Refresher Course. Yet again, no distinction was drawn between the women and the male batch mates, and they underwent the identical course at the same time.

15. It was only in May, 2006 that the respondents notified a separate gradation list consisting of 145 only female (SI/GDs) on 1st May, 2006.

16. The petitioners have stated that representations and objections were raised by some female (Mahila) SI/GDs to the Director General of the CRPF including a representation dated 16th October, 2006 and 30th November, 2006 for maintenance of a combined gradation list of all SI/GDs, whether male or female.

This request was rejected by the Director General of the CRPF by a communication dated 26th February, 2007 informing that the personnel of the CRPF were governed by the CRPF Act, 1949 and CRPF Rules, 1955. The Director General of the CRPF placed reliance on Sub-Clause d incorporated in Rule 5 (A) of the CRPF Rules, 1955 mandating that a separate cadre upto the rank of Inspector for Mahila Battalion be maintained. Mahila SI/GDs were informed that for this reason they were being promoted separately upto the rank of Inspector as per vacancies arising in Mahila ranks and are not to be considered together with their male counterparts for promotion and maintenance of seniority.

17. The petitioners have challenged the action of the respondents in placing women appointed as Sub-Inspector/GD through SSIC in a separate seniority list up to the rank of Inspector and thereafter combining them in the same seniority list with that of their male counterparts who though initially appointed by them through the SSIC exam as Sub-Inspector/GD, but were granted accelerated promotions in the rank of Inspector and thereafter on account of separate seniority list being maintained exclusively for male SubInspectors. The petitioner have also laid challenge to the constitutionality of Rule 5(A)(d) of the CRPF Rules, 1955 which permits a separate cadre up to the rank of Inspector for the Mahila Battalion on the ground that the same results in hostile discrimination against the women Sub-Inspector is violative of Article 14 and 16 of the Constitution of India. It is urged that there is no provision under the Central Reserve Police Force Act permitting maintenance of separate seniority list in respect of women Sub-Inspector/Inspector (GD) or under the rules and the only basis which exists in the rule is that of Sub- Inspector/Inspector (GD), irrespective of gender of the employee.

18. It is the case of the petitioner that one Anshuman Nilratna, the petitioners batchmate, a male SI/GD was also appointed by the appointment letter dated 23rd January, 2003 by which the petitioners noted above had been appointed. WP(C) Nos.8744/2011 and 1368/2012 He was detailed Page 7 of 41 further for undergoing the Senior Sub Inspector Cadre Course and was thereafter promoted to the rank of Inspector on 8 th January, 2007. The same officer was thereafter detailed for the Senior Inspector Cadre Course and on 2nd November, 2010 was

promoted as an Assistant Commandant at serial No.81.

19. As against this, the petitioners No.1 to 3 along with other women (Mahila) SI/GDs were permitted to undertake the promotional Senior Sub Inspector Cadre Course only in August, 2008. They were thereafter promoted as Inspector only on 12th March, 2010. Their male counterparts, who were appointed on the same date as the Mahila incumbents, had by this date already picked up position as Assistant Commandants.

20. Ms.Rekha Palli, learned counsel for the petitioner has pointed out that Bilju A. T. (the writ petitioner in WP(C) No.8744/2011) is married to Manoj M. Both of them were appointed pursuant to the same entrance exam as well as combined exam and were issued same offer of appointment dated 23 rd January, 2003 and were batchmates when they were appointed. But by virtue of the discriminatory treatment meted out to them on account of Rule 5(A)(d), Bilju A.T. continues on the post of Inspector while her husband Manoj M had been promoted as an Inspector in 2007 itself and thereafter promoted as Assistant Commandant in the year 2012.

21. Learned counsel for the parties have been heard at length.

22. Like the other petitioners, the petitioner in WP(C) No.1368/2012 as well as the writ petitioner No. 4 in WP(C) No.8744/2011 (newly added) were not detailed for the Senior Sub Inspector Cadre Course (SSICC) in 2007 when their male batchmates were asked to undertake the course for promotion to the post of Inspector. The petitioners, Manorama Singh and Suman Pal in WP(C) No.8744/2011 were appointed as Sub-Inspector with Inspector Bilju in the year 2003. They had also undergone the DASO-71 course and the Platoon Commander Refresher Course with their male batchmates. They were posted in the Special Protection Group in 2005 and till date have not been posted in any Mahila Battalion. Just as Inspector Bilju, they were not detailed for the SSICC Course in 2007 for promotion as Inspector, when their male counterparts were so detailed. They were subsequently asked in August, 2008 to submit their willingness for the promotional course to be held from 6 th October, 2008 to 2nd January, 2009. However, these petitioners were unable to give their willingness at

that stage on account of their pregnancy and as such were not permitted to undertake the course. Shortly, after their delivery and after being upgraded to medical category SHAPE-I they requested for being detailed for next course for SSICC but their request was not acceded to. These writ petitioners were detailed for the 46th SSICC course only in June, 2011 and as such were denied further promotion for a further period of almost two years. They successfully completed the SSICC course, yet till date, are continuing to work as SI/GD while their male batchmates, as noted above, stand promoted as Inspectors in the year 2007 and have further been appointed as Assistant Commandants since, 2010. The injustice done to these women has been further exacerbated on account of their pregnancies and they have suffered double discrimination inasmuch as even their female counter parts have been granted promotion much before they have even been considered for the same.

23. Similarly Suman Pal (Petitioner No.2 in WP(C) No. 1368/2012) was not permitted to undertake the promotional course from 6th October, 2008 to 2nd January, 2009 because of her pregnancy. She was detailed for this course only in June, 2011. As a result, she continues as SI/GD even on date. As against this, her husband Vijay Mehndiratta, who was appointed pursuant to the same combined entrance exam in the year 2003, picked up the rank of Inspector in 2007 and has been promoted as the Assistant Commandant in the year 2012.

24. The petitioners in these writ petitions therefore challenge the action of the respondents in placing women appointed as SubInspector/GD through SSC in a separate seniority list upto the rank of Inspector and thereafter placing them in the same seniority list. The petitioners are aggrieved by the action of the respondents in thereby enabling the male personnel to not only earn faster promotions to the rank of Inspector but also to the further promotional posts including that of Assistant Commandant. The petitioners have challenged the constitutionality of Rule 5(A)(d) of the CRPF Rules on the ground that it arbitrarily prescribes maintenance of a separate cadre upto the rank of inspectors for the Mahila Battalion even though male and female SIs are appointed through a common entrance exam; undergo the same trainings; perform the same duties. The petitioners challenge the said rule on the ground that it results in hostile

discrimination against them and thus it violates Article 14 of the Constitution of India. The petitioners have also complained that the rule violates the fundamental rights of the petitioner to equality under Article 16 and 21 of the Constitution.

25. In support of these submissions, Ms. Rekha Palli, learned counsel for the petitioners has placed reliance on the judicial pronouncements reported at: (i) (1979) 4 SCC 260.C.B. Muthamma v. Union of India & Ors. (paras 1, 4 and

6) (ii) AIR 198.SC 1829.Air India v. Nargesh Meerza (paras 76 to

80) (iii) (2008) 3 SCC 1.Anuj Garg v. Hotel Association of India & Ors. (paras 7, 9, 21, 30 and

36) (iv) 168 (2010) DLT 115.Babita Puniya v. Secretary & Anr. (paras 1, 24, 25, 36 and

55) (v) (2013) 1 SCC 745.Namit Sharma v. Union of India 26. In (1979) 4 SCC 26.Miss C.B. Muthamma, I.F.S. (supra), the Supreme Court was testing the challenge to a rule which rendered marriage of women employees and their domestic commitment a ground for discharge from service. Prior permission was also required for a member of the service before she could solemnize her marriage. It was observed by V.R. Krishna Iyer, J that:

4. What is more manifest as misogynist in the Foreign Service is the persistence of two rules which have been extracted in the petition. Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, unblushingly reads:

8. (2). In cases where sub-rule (1) does not apply, a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnised. At any time after the marriage, a woman member of the Service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service.

5. Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries,

the same risk is run by the Government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service are likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species. Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, runs in the same prejudicial strain: (1)-(3) (4) No married woman shall be entitled as of right to be appointed to the service.

6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity viz. our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.

27. Rule 5(A)(d) of the CRPF Rules, 1995 in the present case discriminates against the woman members of the CRPF in a similar manner.

28. We may also refer to the pronouncement of the Supreme Court reported at AIR 198.SC 1829.Air India v. Nargesh Meerza and others wherein the Court was examining the constitutionality of Air India Employees Service Regulations 46 and 47 with regard to the retirement of Air Hostesses in the event of their marriage taking place within 4 years of marriage. Though the result of the consideration by the Court was unfavourable to the respondent, however the observations of the Court on the fundamental right of equality of opportunity and permissible classification which would satisfy the test under Article 14 of the Constitution deserve to be noted in extenso and read as follows:

37. Thus, from a detailed analysis and close examination of the cases of this Court starting from 1952 till today, the following propositions emerge: (1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc. are introduced in different or dissimilar posts. Thus, where the class or categories of service are essentially different in purport and spirit. Article 14 cannot be attracted. (2) Article 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Article 14 will be completely out of the way. (3) Article 14 certainly applies where equals are treated differently without any reasonable basis. (4) Where equals and unequals are treated differently, Article 14 would have no application. (5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity. (6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined: (a) the nature, the mode and the manner of recruitment of a particular category from the very start, (b) the classifications of the particular category, (c) the terms and conditions of service of the members of the category, (d) the nature and character of the posts and promotional avenues, (e) the special attributes that the particular category possess which are not to be found in other classes, and the like. xxx 80. Coming now to according to which terminated on first complete agreement xxx xxx the second limb of the provisions the services of AHs would stand pregnancy, we find ourselves in with the argument of Mr Setalvad that this is a most unreasonable and arbitrary provision which shocks the conscience of the Court. The Regulation does not prohibit marriage after four years and if an AH after having fulfilled the first condition becomes pregnant, there is no reason why pregnancy should stand in the way of

her continuing in service. The Corporations represented to us that pregnancy leads to a number of complications and to medical disabilities which may stand in the efficient discharge of the duties by the AHs. It was said that even in the early stage of pregnancy some ladies are prone to get sick due to air pressure, nausea in long flights and such other technical factors. This, however, appears to be purely an artificial argument because once a married woman is allowed to continue in service then under the provisions of the Maternity Benefit Act, 1961 and the Maharashtra Maternity Rules, 1965 (these apply to both the Corporations as their Head Offices are at Bombay), she is entitled to certain benefits including maternity leave. In case, however, the Corporations feel that pregnancy from the very beginning may come in the way of the discharge of the duties by some of the AHs, they could be given maternity leave for a period of 14 to 16 months and in the meanwhile there could be no difficulty in the Management making arrangements on a temporary or ad hoc basis by employing additional AHs. We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution. xxx 29. xxx xxx The above observations squarely apply to the working of the Rule 5(A)(d) of the CRPF Rules, 1995, so far as the petitioners who were unable to undergo the course on account of their pregnancies and thereafter are concerned. It has to be held that the impugned actions of the respondents were unfair, unreasonable and arbitrary qua

these women personnel of the CRPF.

30. It has been urged at some length by Ms. Rekha Palli, learned counsel for the petitioner before us that while considering a challenge to the constitutionality of the rule, this Court is required to consider the real effect of the provision before arriving at a conclusion. In support of this proposition reliance is placed on the pronouncement of Supreme Court at (2013) 1 SCC 745. *Namit Sharma v. Union of India* wherein the Court ruled as follows:

10. In determining the constitutionality or validity of a constitutional provision, the court must weigh the real impact and effect thereof, on the fundamental rights. The Court would not allow the legislature to overlook a constitutional provision by employing indirect methods. In *Minerva Mills Ltd. v. Union of India* [(1980) 3 SCC 625] this Court mandated without ambiguity, that it is the Constitution which is supreme in India and not Parliament. Parliament cannot damage the Constitution, to which it owes its existence, with unlimited amending power. xxx xxx xxx 14. A law which violates the fundamental right of a person is void. In such cases of violation, the Court has to examine as to what factors the Court should weigh while determining the constitutionality of a statute. First and the foremost, as already noticed, is the competence of the legislature to make the law. The wisdom or motive of the legislature in making it is not a relative consideration. The Court should examine the provisions of the statute in light of the provisions of the Constitution (e.g. Part III), regardless of how it is actually administered or is capable of being administered. In this regard, the Court may consider the following factors as noticed in D.D. Basu, *Shorter Constitution of India* (14th Edn., 2009): (a) The possibility of abuse of a statute does not impart to it any element of invalidity. (b) Conversely, a statute which violates the Constitution cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements. In *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613., SCC at p. 667, para 13, Mukharji, C.J.

made an unguarded statement viz. that 13. In judging the constitutional validity of the Act, the subsequent events, namely, how the Act has worked itself out, have to be looked into. It can be supported only on the test of direct and inevitable effect

and, therefore, needs to be explained in some subsequent decision. (c) When the constitutionality of a law is challenged on the ground that it infringes a fundamental right, what the Court has to consider is the direct and inevitable effect of such law. (d) There is presumption in favour of constitutionality of statutes. The law courts can declare the legislative enactment to be an invalid piece of legislation only in the event of gross violation of constitutional sanctions. (emphasis supplied) xxx xxx 16. Article 14 forbids class legislation but does not forbid reasonable classification which means:

16. 1. It must be based on reasonable and intelligible differentia; and 16.2. Such differentia must be on a rational basis. 16.3. It must have nexus with the object of the Act.

31. A challenge was laid to the refusal by the Army to grant permanent commission to woman officers who have been appointed on short service commission judgment. The judgment of the Division Bench of this Court reported at 168 (2010) DLT 115(DB), Babita Puniya v. Secretary & Anr. held that the practice resulted in discrimination on ground of gender to the woman officers and accepted the challenge. The observations of the Court shed valuable light on the present consideration. The relevant extract of the pronounced is reproduced hereafter: Nature gave women too much power; the law gives them too little. observed Will Henry, American political adviser and columnist. The claim of women to the right to serve in the Armed Forces has been and is a matter of debate in various countries. The denial of such right is pleaded to be a case of gender discrimination. This is more so as the modernization of the Armed Forces has resulted in lesser reliance on a hand-to-hand combat. The debate in each country is coloured by its own social and cultural norms and ethos. In some of the countries women have now been inducted into combat force while in other countries the induction has been restricted to support services to actual combat. xxx xxx xxx 23. Learned Counsel for the parties relied upon a number of authoritative pronouncements to advance the case. Broadly speaking, the cases cited by the petitioners are to advance the plea that any gender discrimination should be frowned upon and must be struck down as ultra vires in view of the provisions of Articles 14, 16 and 21 of the Constitution of India and going against

the very theme and ethos of our Constitution. On the other hand, the respondents have sought to emphasize that the matters in issue are really dealing with the policy domain which should be best left to the executive to decide, more so when such policies are in respect of a sensitive issue of induction of women in the armed forces. xxx xxx xxx 36. Our focus has been to look into specifically the aspects of grant of PC to women officers where they already stand admitted to the SSC and have served honourably for a number of years so that there is no discrimination based on gender. We may observe that in the *Ministry of Defence v. Armstrong*, (2004) IRLR 67 EAT (DG), the Employment Appeal Tribunal in the United Kingdom held that female army career officers whose inferior pay was the result of a lack of a pension, were entitled to a pay equal to male soldiers undertaking similar work. In the aforesaid judgment, it was held that the Employment Tribunal was justified in coming to the conclusion that the female officers were paid less for gender-based reasons.

55. No doubt the position in the Army is slightly different as the plea is not based on specific advertisement but the fact remains that in certain areas of operation it was deemed appropriate to have women SSC officers like the JAG Branch. There were also male SSC officers performing the same task. If the male officers can be granted PC while performing those tasks there is no reason why equally capable women officers cannot be granted PC. It is not a charity being sought by the women officers but enforcement of their own constitutional rights.

32. Interestingly before us, the CRPF has drawn no functional distinction between female and male personnel. We have been taken through the Central Reserve Police Act, 1949 as well as the CRPF Rules, 1955. We find that neither the statute nor the rules framed therein contain any distinction or post of SI/Mahila or SI/Male. In fact, no distinction is drawn between male or female incumbents at any level of appointment so far as the CRPF is concerned. However, by virtue of incorporation of Rule 5(A) (d), which we have noted herein above alone, a distinction has been carved out. The rule mandates maintenance of a separate cadre upto the rank of Inspector for Mahila Battalion. The respondents are unable to explain any reason whatsoever for carving out this special classification for women officials upto the rank of Inspector.

33. It is noteworthy that even while stipulating maintenance of a separate cadre upto the rank of Inspector for Mahila Battalion, the rule does not prescribe that these woman officials could be posted only in Mahila Battalions. In fact the respondents are not posting the women officials in a separate battalion at any rank or level. As noted above, several of the petitioners have been posted with the Special Protection Group and have never been posted in the Mahila Battalions. At the same time, the Mahila Battalion itself consists of a mix both male and female, personnel of the CRPF.

34. We are informed by Mr. Ashish Nischal, learned counsel for the respondents that out of approximately 167 women SI/GDs, only about 61 Mahila SI/GDs are posted in the three Mahila Battalions. The remaining women SI/GDs are posted in Regular Duty Battalions; Training Centres; Special Protection Group; National Security Guards etc. In all these positions as well as the Mahila Battalions, no distinction is maintained so far as the assignment of duties and task is concerned.

35. Learned counsel for the petitioner has pointed out that the unfairness to the women cadre is writ large from the manner in which they were treated even after picking up promotion as Inspector because they are thereafter merged with male counterparts and a common gradation list is drawn up as Inspector/General Duty. As a result, many male SI/GDs, who had joined the CRPF even three or four years after the Mahila SI/GDs, were placed senior to them in the rank of Inspector/GD.

36. The challenge by the writ petitioner is supported by the fact that there is no operational exigency or any other reason which can justify the discrimination meted out to the petitioners or to the carving out of the cadre of Mahila SI/GDs by the CRPF. It is pointed out that a Mahila SI/GD or Mahila Inspector/GD is not posted exclusively in a Mahila Battalion. The petitioners have placed a list of authorised strength of Non-Gazetted Officers in Mahila Battalion which shows that the respondents have in fact posted a mix of male and female officials even in Mahila Battalions.

37. It is undisputed before us that women are performing identical duties as their male counterparts. Yet as is urged, are being placed in a highly disadvantageous position.

38. The absurdity of the working of the impugned Rule is thus glaring. It is in place only for the purpose of denial of promotional opportunity to the women officials upto the rank of Inspector/GDs and thereby adversely impacting their further promotions. Under the shield of Rule 5(A)(d) of the CRPF Rules, the respondents do not permit these women personnel to undertake the promotional course at their turn as per their original seniority which in fact is their real seniority position. They are then placed junior to their male batch mates. This is then used for denying them further promotions as well.

39. It is also noteworthy that in case the women incumbents were to form a separate cadre, then the respondents would have notified such cadre at the inception, i.e, when they joined service and would have also carved out a determinate percentage of posts for promotions in all ranks as well and made appointments at all stages in this proportion.

40. This position can also be tested by a hypothetical fact situation. The respondents have no answer as to how the rule would operate if in any combined entrance exam of the Central Police Organizations, only women candidates were successful and recruitment was effected only of women SI/GDs. There is also no explanation at all for the several instances noted by us heretofore where the women SI/GDs have been throughout working outside the Mahila Battalions including the Special Protection Groups.

41. In (2008) 3 SCC 1. Anuj Garg v. Hotel Association of India & Ors., the Supreme Court was considering a challenge to the government promotion to the employment of women where liquor was being served. The observations of the court apply squarely to the present challenge. It was held by the court as under:

2. Constitutional validity of Section 30 of the Punjab Excise Act, 1914 (for short the Act) prohibiting employment of any man under the age of 25 years or any woman in any part of such premises in which liquor or intoxicating drug is consumed by the public is the question involved in this appeal which arises out of a judgment and order dated 12-1-2006 passed by the High Court of Delhi in CWP No. 4692 of 1999.

16. In *Randhir Singh v. Union of India* [(1982) 1 SCC 61.:

1982. SCC (L&S) 119] this Court while holding that non-observance of the principle of equal pay for equal work for both men and women under Article 39(d) of the Constitution amounted to violation of Articles 14 and 16, recognised that the principle was expressly recognised by all socialist systems of law including the Preamble to the Constitution of the International Labour Organisation.

18. In the instant matter, we are in the thick of debate relating to individual rights of women. The classical counter to individual rights is the community orientation of rights. There is no such shade to the current matter. Here the individual rights are challenged by a problem of practical import of enforcement and security.

21. When the original Act was enacted, the concept of equality between two sexes was unknown. The makers of the Constitution intended to apply equality amongst men and women in all spheres of life. In framing Articles 14 and 15 of the Constitution, the constitutional goal in that behalf was sought to be achieved. Although the same would not mean that under no circumstance, classification, inter alia, on the ground of sex would be wholly impermissible but it is trite that when the validity of a legislation is tested on the anvil of equality clauses contained in Articles 14 and 15, the burden therefor would be on the State. While considering validity of a legislation of this nature, the Court was to take notice of the other provisions of the Constitution including those contained in Part IV-A of the Constitution.

24. The impugned provision provides for wide restrictions. It prohibits employment of any woman in any part of the premises where liquor is being served. It would prohibit employment of women and men below 25 years in any of the restaurants. As liquor is permitted to be served even in rooms, the restriction would also operate in any of the services including housekeeping where a woman has to enter into a room; the logical corollary of such a wide restriction would be that even if service of liquor is made permissible in the flight, the employment of women as air hostesses may be held to be prohibited.

37. Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the State as well as law modelling done in this behalf.

39. Gender equality today is recognised by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe. xxx xxx xxx 47. No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling State purpose. Heightened level of scrutiny is the normative threshold for judicial review in such cases. xxx xxx xxx 52. In *United States v. Virginia* [518 US 515.532-33 (1996)] Ginsburg, J.

notes with particular emphasis the need for an intrusive multi-stage review in sex discrimination statutes. The Court observed: The heightened review standard our precedent establishes does not make sex a proscribed classification. Supposed inherent differences are no longer accepted as a ground for race or national origin classifications. Physical differences between men and women, however, are enduring. Inherent differences between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity. Sex classifications may be used to compensate women for particular economic disabilities [they have] suffered, to promote equal employment opportunity, to advance full development of the talent and capacities of our nation's people. But such classifications may not be used, as they once were, to create or perpetuate the legal, social, and economic inferiority of women.

55. In the instant case the end result is an invidious discrimination perpetrating sexual differences.

42. The challenge by the petitioner to the Rule 5(A)(d) of the CRPF Rules, 1995 and the action of the respondents is premised on the same being violative of Article 14 and 16 of the Constitution of India. In (1983) 1 SCC 305.D.S. Nakara & Others vs. Union of India, the court was concerned with the criteria of date of enforcement of revised pension scheme entitling benefits of revision to those

retiring after that date while depriving the benefit to those retiring prior to that that. This condition was held to be violative of Article 14 of Constitution of India. In para 10 to 15 of the judgment, the court had discussed the scope and meaning of Article 14 and Article 16 of the Constitution of India.

10. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in *Maneka Gandhi v. Union of India* : [1978]2SCR621 from which the following observation may be extracted: ...what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence...

11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question, (see *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors.* : [1959]1SCR279 The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under

consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J.

in *Re. Special Courts Bill* : [1979]2SCR476 restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: * * * 3. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. * * * 6. The law can make and set apart the classes according of the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the

legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act. * * *

13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in *Maneka Gandhi's case* in the earliest stages of evolution of the Constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *EP. Royappa v. State of Tamil Nadu* : (1974)ILLJ172SC , it was held that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. this Court further observed as under: From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style dissected Article 14 as under: The article has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses'-if we may use current cliché-can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law; be you ever so high, the law is above you." MANU/SC/0133/1978: [1978]2SCR621 . Affirming and explaining this view, the Constitution Bench in *Ajay Hasia etc. v. Khalid Mujib Sehravardi and Ors etc.* : (1981)ILLJ103SC held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must

necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India etc. v. Nargesh Meerza and Ors. etc.* : (1981)11LLJ314SC the Court formulated propositions emerging from analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

16. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

43. In the instant case, there is neither any discernable nor any disclosed reasons from the conduct or submissions of the respondents for segregating female Sub-Inspector in a separate cadre as against the male employees of the force up to the rank of Inspectors.

44. The discrimination against the petitioners, in fact, against all Mahila personnel is stark. It is an admitted fact that the male SubInspectors selected along with the petitioners and performing the same duties as the petitioners, have been promoted as Inspector much earlier than the petitioners and have even been promoted as Assistant Commandant since 2010. Male Sub-Inspectors have been so promoted to steal a march only on account of gender discrimination premised on the working of Rule 5(A)(d) of the CRPF Rules.

45. There is no justification at all as to why the separate cadre has been created or maintained only till the rank of Inspector and upon earning promotion to the rank of Inspector, they are merged with their male counterparts with their seniority being reckoned from the date they are assigned the rank of Inspector. Those male and female Sub-Inspectors may be appointed on the same date however, their promotion to the Inspector is not after the same years of service.

46. The respondents also admit that in other forces like the Central Armed Police Force Services (CAPFs); Central Industrial Security Force (CISF); Border Security Force (BSF) and the Indo Tibetan Border Police (ITBP), there is no such segregation of women personnel at any stage. Similarly placed male and female have equal chances of promotion.

47. Ms. Rekha Palli, learned counsel for the petitioner has pointed out that the petitioners before this court have never received any adverse remarks in the Annual Confidential Report or warning or admonishment of any kind. On the contrary all of them are confident that their gradings would be Very Good or Outstanding as their performance has received appreciation from their superiors.

48. There is substance in the contention of the petitioner that not only they have been placed below their male counterparts who had joined the CRPF with them but below even to those personnel who were working as Head Constables when the petitioner had joined the services as Sub-Inspector. As a result, the petitioners are being compelled to work below their juniors. Ms. Rekha Palli, learned counsel points out that CRPF is a uniformed force and the petitioner are duty bound to salute those who are junior to them only on account of working of the rule based on gender discrimination.

49. The above narration of fact would also show that the respondents are causing grave prejudice to women who are unable to undergo a promotional course on account of pregnancy. Instead of enabling such female Sub-Inspectors to undertake the course immediately after she delivers her child, she is made to wait for several years even to undergo the promotional course resulting in denial of promotion to her for several years. In fact the petitioner in WP(C) No.1368/2012 were so denied an opportunity to undergo a promotional course even though they were permitted to undergo the SSIC course. We are informed that they are still continuing to work as Sub-Inspector only because they could not be detailed for the SSIC promotional course in August, 2008 on account of their pregnancy and were sent for this course only in June, 2011.

50. The respondents do not even remotely suggest that there is any distinction in the selection and appointment process or the training courses which the female

and male personnel have to undertake. There is no difference in the duties assigned to female or male personnel. No special or different training is given to male personnel for promotion to the rank of Sub-Inspector or Inspector or even thereafter.

51. Thus in fact, so far as the allocation of duties, their performance as well as undertaking the course is concerned, the respondents maintain complete general symmetry and equality. It is only for the purpose of effecting promotion to the post of Inspectors that such a class appears to have been carved out.

52. We therefore, find substance in the contention of learned counsel for the petitioner that there is no rationale for the prescription in the rule for maintenance of a separate cadre upto the rank of Inspector for the Mahila Battalion and there is no intelligible differentia for so doing. No explanation for the classification is pointed out. The only discernible objective of this rule appears to be denial of promotion to women Sub-Inspectors on the date when the same became due. As a result, their male counterparts are given promotion though lower in seniority to the Mahila official and are being permitted to steal a march over them. In the next-rank, the seniority is drawn up in common, placing the female candidate permanently below their male counterparts. The same, therefore, is clearly violative of the Article 14 of the Constitution of India. The same also results in hostile discrimination of the Mahila SI/GDs who are denied equal opportunity for promotion. As a result of such arbitrary and unequal treatment, the petitioners are denied promotions when the same is granted to their male counter parts resulting in their being placed juniors or subordinates to them even they were appointed on the same date and, therefore, is also violative of Article 16 and 21 of the Constitution.

53. We find that so far as the placement in temporary low medical category of male officers is concerned, immediately after upgradation of their medical category, the respondents place the male officials at the appropriate place in their seniority gradation which is being unfairly denied to the women SI/GDs who were placed in temporary low medical category, not on account of sickness, but only on account of their pregnancy. Yet they are denied promotion or placement at the

appropriate place in the seniority list after their deliveries. Such female personnel have not been permitted to undertake the promotion course for several years as noted herein above. The specific pleas of the petitioners in this regard have not been disputed by the respondents. This treatment of the female incumbents, who were denied participation for a promotional course because of the pregnancy, is not provided in any statutory authority or rule framed therein and is certainly not sustainable.

54. For all the foregoing reasons, the rule is violative of Article 14 and 16 of the Constitution of India. Such rule is also in blatant violation of the rights of the women personnel. All actions of the respondents premised thereon including the drawing up of the separate seniority list of Mahila employees and working of the Rule would also be unconstitutional. Conclusion 55. We have discussed at length that whether male or female, right from the recruitment; through training and then assignment of duties female personnel are being given identical assignment and standards. No justification is placed for the discrimination which certainly is a violation of their rights under Article 14 and 16 of the Constitution of India. In view of the above we hold that Rule 5(A)(d) of the CRPF Rules, 1955 is unconstitutional being violative of Articles 14, 16 and 21 of the Constitution of India. The actions of the respondents in drawing up separate seniority lists of the Mahila employees and consequential actions effecting the petitioners are therefore unconstitutional and so declared.

56. It is not disputed that all the writ petitioners have undergone the requisite promotional course for the post of Inspectors and had satisfactorily performed their duties as an Inspector or Sub Inspector as the case may be. They have been deprived of the opportunity to take the Assistant Commandants Promotional Court (earlier SSICC) by the respondents only because of their working of Rule 5(A)(d). Result 57. A writ of mandamus is issued directing the respondents to draw a common seniority list of SI/GDs irrespective of their gender, based on their entry point seniority.

58. The respondent shall place the petitioners appropriately in the combined seniority list for SI/GDs (Male and Mahila), based on their seniority as per initial

appointment into the force.

59. In case, there is any Mahila SI/GDs, who has not undertaken the course for promotion as Inspector, she shall be permitted to do so. The respondent shall, thereafter, issue the formal orders for her appointment as an Inspector. However, in the seniority list which shall be maintained, such Mahila incumbent shall be deemed to have been appointed immediately before a person lower than her as per the entry point seniority.

60. All petitioners who have completed, or when they complete the promotion course, shall be deemed to have been granted promotion as Inspector on the date when their immediate juniors (irrespective of gender) were promoted.

61. All women Sub-Inspectors who have completed the SICC Course successfully shall be granted promotions which shall relate back to the date when their respective immediate junior was promoted.

62. It is further directed that Mahila Sub-Inspectors who were placed higher in seniority at the time of their entry into the CRPF than their male counterparts but were denied opportunity to participate in the SICC Course or promotion when due because of their gender, an opportunity shall be given to them to complete the SICC Course. Upon their successful completion of the said course, they shall be given notional promotion to the post of SI from a date relating back to the date when their juniors were promoted and shall also be given notional seniority from that date. However, monetary benefits in the promotion post shall be admissible to them from the date that they actually join duties in the said post.

63. It is clarified that these directions would operate qua all the Mahila Sub-Inspectors and Inspectors in the CRPF and not only to the petitioners before us. Such directions are necessary so that repeated challenges by other women officers are avoided and also that the proper seniority list is prepared fairly and operationalized. The respondents shall effectuate these directions as well.

64. So far as promotion from Inspector to Assistant Commandant is concerned, respondents shall effectuate the above directions made by us in respect of

promotions to the rank of Inspectors also for effecting promotions of Inspectors to the rank of Assistant Commandants.

65. The respondents shall therefore permit the petitioners and other eligible Mahila Inspectors to undertake the ACPC course and on successful completion thereof they shall be appointed as Assistant Commandants subject to vacancies and fitness, if stipulated under the rules. However, the respondent shall ensure notional fixation of their seniority as per their entry point seniority SI/GDs position as maintained.

66. As these writ petitions were filed in the year 2011. So far as the writ petitioners and newly added petitioners are concerned, they would be entitled to all monetary benefits as well with effect from the date of filing of the writ petitions.

67. The respondents shall take steps in terms of the above directions within 12 weeks from today and pass appropriate order which shall be communicated to the petitioners and brought to the knowledge of all concerned. The payments to the writ petitioners will be made immediately upon the passing of the order.

68. As we have granted monetary benefits with effect from the date of filing of the writ petition, no order awarding costs of the litigation is being made. These writ petitions are allowed in the above terms. GITA MITTAL, J J.R. MIDHA, J MAY 24.2013 Sv/dk/mk

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