

Permanent Commission for Women : The SC rules the Annual Confidential Report Discriminatory

April 6, 2021

The Supreme Court struck down the Army's evaluation criteria to assess women short service commission officers for permanent commission calling it a "systemic, indirect discrimination" against them and asked it to grant permanent commission to all such officers who have fulfilled the cut off.

In news: Evaluation process for permanent commission of women in Army discriminatory: SC

Placing it in syllabus: Society

Dimensions

- SC Ruling: Observations and Arguments
- Its Importance
- The Original Ruling of the SC

Content:

SC Ruling: Observations and Arguments :

- The Supreme Court allowed the pleas of several women Short Service Commission (SSC) officers seeking permanent commission (PC) in the Indian Army and said that the annual confidential report (ACR) evaluation process was flawed and discriminatory.
- The Supreme Court said the evaluation criteria adopted by the Army to grant permanent commission (PC) to women caused "systemic discrimination" against them.

- The Supreme Court held that the Army's selective evaluation process discriminated against and disproportionately affected women officers seeking permanent commission.
- It observed that the pattern of evaluation inherently caused economic and psychological harm to short service commission women officers.
- Additionally, the court invoked Article 142 of the Constitution, which allows it to pass any order "necessary for doing complete justice".

Indirect Discrimination is Unconstitutional:

- In a judgment delivered in the **Lt. Col. Nitisha vs Union of India case** the Supreme Court held that the implementation of the Babita Puniya judgment had also been discriminatory.
- In particular, the importance of Lt. Col. Nitisha lies in the fact that the **criteria for grant of PCs to women were facially neutral, but** found to be **indirectly discriminatory**.
- It emphasised on the need to look at the effect of the discrimination, rather than the intentions or the motives of the discriminator.
- It then asserted that "in the light of the fact that the **pattern of evaluation will in effect lead to women being excluded from the grant of PC on grounds beyond their control**, it is indirectly discriminatory against WSSCOs (women SSC officers)".

Wholehearted Adjustments required to rebuild Equal Society:

- The court observed that the "structures of our society have been created by males for males". It therefore pointed out that **"adjustments, both in thought and letter, are necessary to rebuild the structures of an equal society"**.
- **"These adjustments and amendments** however, are not

concessions being granted to a set of persons, but instead **are the wrongs being remedied to obliterate years of suppression** of opportunities which should have been granted to women,” it clarified.

- The court added that “it is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces, when the true picture of their service conditions tells a different story. A superficial sense of equality is not in the true spirit of the Constitution and attempts to make equality only symbolic.”
- The court said that **Army’s evaluation criteria should not be enforced and laid out other criteria for granting PC to women** officers.
- Eighty six officers had approached the Supreme Court, calling into question the modalities which were followed for assessing them.
- They had contended that the criteria stipulated for them to qualify for permanent commission was a “**mechanical reproduction of the existing procedure for male officers**, who are evaluated for PC in their 5th or 10th year of service, without making any modifications”.

The **medical criteria**, they said, is “**arbitrary and unjust as the women officers who are in the age group of 40-50 years of age** are being required to conform to the medical **standards that a male officer would have to conform to at the group of 25 to 30 years.**”

Its Importance

- For now Lt Col Nitisha’s Case marks an important advance in its acknowledgement, recognition, and articulation of indirect discrimination under the Indian Constitution.
- This marks the first occasion that the Supreme Court has categorically **held indirect discrimination to violate**

the Constitution, and set out an account of what indirect discrimination entails.

The Original Ruling of the SC:

- On February 17, 2020, the Supreme Court declared that women officers in the short service commission should be provided an equal opportunity with their male counterparts for a shot at permanent commission and promotions.
- The Supreme Court delivered judgment in **Secretary, Ministry of Defence vs Babita Puniya**, holding that the Indian Army's policy of denying women officers a permanent commission was discriminatory.
- The verdict had dismissed as "sex stereotype" views that women were physiologically weaker than men.
- The **court struck down the formal and direct discrimination** women officers faced by not being eligible for the grant of PC.
- women officers with more than 14 years of service who do not opt for PC were entitled to continue in service until they attained 20 years of pensionable service.
- As a one time measure, the benefit of continuing in service was also given to all existing SSC officers with more than 14 years of service, who are not appointed to PC.
- Following this judgment, the Union Government put into place a procedure for the grant of PCs to eligible women officers.

Mould your thought: Lt Col Nitisha's Case marks an important advance in its acknowledgement, recognition, and articulation of indirect discrimination under the Indian Constitution. Evaluate.

Approach to the answer:

- Introduction

- Discuss the Babita Puniya case verdict and Direct Discrimination
- Discuss the judgement of Lt Col Nitisha Case
- Discuss the importance of the judgement
- Conclusion