

A WG CDR A U TAYYABA (RETD) AND OTHERS

v.

UNION OF INDIA AND OTHERS

(Civil Appeal Nos 79-82 of 2012)

B November 16, 2022

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,
HIMA KOHLI AND J B PARDIWALA, JJ.]**

*Armed Forces: Permanent Commission – Claim for, by Women Short Service Commissioned Officers (SSCO) – The Delhi High Court in its lead judgment in *Babita Puniya v. Secretary & Anr, issued specific directions for considering Women SSCO in the Air Force and in the Army for the grant of Permanent Commission (PC) – Indian Air Force implemented the said judgment only for those officers who were in service as on 12 March 2010 or those retired/ released officers who were not in service as on 12 March 2010 but had filed writ petitions before their release – Appellants were left out from the reinstatement plan of IAF as they were released from service prior to 12 March 2010 – Appellants unsuccessfully challenged the manner of implementation of decision in *Babita Puniya v. Secretary & Anr. – On appeal, Held: Para 61(3) of the judgment of the Delhi High Court provided that Women SSCOs of the IAF who had opted for PC but were not granted PC but allowed only an extension of their Short Service Commissions were entitled to PC at par with men SSCOs with all consequential benefits – It covers only two categories (i) Serving women SSCOs as on the date of the judgment (ii) Women SSCOs who had instituted writ petitions before the High Court but who had retired during the course of the pendency of the petitions – Hence, submission of appellants of including them in reinstatement plan of IAF cannot be accepted as they did not fall into any of the above two categories – However, as a matter of fact entire litigation was pursued in the form of a PIL – Appellants had a legitimate expectation since the respondents by their representations in the policy circular dated 25 November 1991 and in published advertisements created expectations among the women SSCOs regarding the grant of PC on completion of five years of service – The women SSCOs continued to be under a legitimate expectation that their extended SSC tenure would be converted into*

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a PC as they were induced in service with a specific representation of being considered for PC – Hence, appellants should be considered for the grant of pensionary benefits as the reinstatement in service is not a viable option having regard to the exigencies of service – This direction emanate in exercise of the jurisdiction of this Court u/Art.142 of the Constitution of India to bring about complete and substantial justice and remove the pernicious effects of gender discrimination which had taken place in the past in the Indian Air Force – Directions passed – Legitimate expectation – Constitution of India – Art.142.

Disposing of the appeals, the Court

HELD: 1. Paragraph 61(3) of the judgment of the Delhi High Court provided that women SSCOs of the IAF who had opted for PC but were not granted PC but allowed only an extension of their Short Service Commissions were entitled to PC at par with men SSCOs with all consequential benefits. PC was to be offered to them after the completion of five years. This will cover consequential benefits including promotion and other financial benefits. However, the benefits were to be made available only to those women officers who were in service and to those who had approached the High Court by filing petitions though they had retired during the course of the pendency of the petitions. The directions of the Delhi High Court in its judgment dated 12 March 2010 envisaged that the benefits were to be made available to those “women officers in service who had instituted proceedings before the High Court and had retired during the pendency of the writ petitions”, and that by virtue of direction (iv), it was envisaged that those women officers who had not attained the age of superannuation for PC officers would be reinstated with all consequential benefits. Hence, it is not possible to accept the wider submission which has been urged on behalf of the appellants that they were expressly covered by para 61 of the Delhi High Court decision. [Paras 20, 25, 26][815-C-D; 816-G-H; 817-A-D]

2. The entire litigation initially was pursued in the form of a PIL which was moved by an advocate. During the pendency of the proceedings, officers of the Air Force and the Army joined in

A the proceedings. The appellants are all officers who are in service
since their initial appointments in 1993. In terms of the policy
circular which held the field as well as the advertisements in
pursuance of which they were recruited, they were under a
legitimate expectation that they would be considered for the grant
of PC at the end of five years. However, they were not offered
B PC and were instead granted extensions in service. [Para 28][817-
E-G]

3. In the present case, the appellants had a legitimate
expectation since the respondents by their representations in
the policy circular dated 25 November 1991 and in published
C advertisements created expectations among the women SSCOs
regarding the grant of PC on completion of five years of service,
subject to vacancies and suitability. All the women officers were
eligible to be considered for grant of PC between years 2000 to
2003, but they were only given an extension of SSC in teeth of
D the legitimate expectation which was held out in the initial terms
and conditions of appointment. The male counterparts of the
appellants were considered for and granted PC after their five
years of service. The women SSCOs continued to be under a
legitimate expectation that their extended SSC tenure would be
E converted into a PC as they were induced in service with a specific
representation of being considered for PC. The Delhi High Court
in the **Babita Puniya* judgment dated 12 March 2010 had also
applied the doctrine of legitimate expectation and observed that
the doctrine of legitimate expectation, grounded in the rule of
law, required regularity, predictability and certainty in government
F dealings with the public, operating on procedural and substantive
matters. Most of these officers joined service between 1993
and 1998 and were eventually released from service between
December 2006 and 2009. They have put in long years of service
for the IAF. During the course of the hearing, the Court has been
fairly apprised on behalf of the Air Force authorities that the
G officers have an excellent track record. [Paras 30, 31][818-C-G]

4. This batch of officers who moved the Delhi High Court
soon after the decision in **Babita Puniya* and within a reasonable
period from the date of their release should not be denied the
benefit which emanates from that judgment. At the same time,
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the Court cannot be oblivious of the fact that the officers have been released from service on diverse dates between December 2006 to December 2009. Reinstatement in service would not therefore be a viable option particularly having regard to the exigencies of service in an armed force of the nation. However, following the logic of the earlier decision of this Court in *Secretary, Ministry of Defence v. Babita Puniya*, the officers should be considered for the grant of pensionary benefits. [Para 32][818-H; 819-A-B]

5. Directions: i. All the women SSCOs governed by the present batch of cases shall be considered for the grant of one-time pensionary benefits on the basis that they have completed the minimum qualifying service required for pension; ii. The cases of the appellants shall be evaluated on the basis of the HRP dated 19 November 2010 bearing Part No 5; and iii. The officers who are found eligible for the grant of pensionary benefits in terms of the present direction shall not be entitled to any arrears of salary, but the arrears of pension shall be payable with effect from the date on which the officers are deemed to have completed twenty years of service; iv. This Court dismissed several other petitions filed by officers who had moved the Delhi High Court after a considerable degree of delay following their release from service; and v. In the present batch of cases, there are three officers who have scored QRs between 6.29 and 6.41. The case of these officers shall be considered sympathetically by the Air Force authorities on the same footing. [Para 34][820-C-F]

**Babita Puniya v. Secretary & Anr (2010) 168 DLT 115 (DB); Secretary, Ministry of Defence v. Babita Puniya and Others (2020) 7 SCC 469 : [2020] 3 SCR 833; State of Jharkhand v. Brahmaputra Metalics Ltd., Ranchi Civil Appeal Nos. 3860-3862 of 2020; 2020 SCC OnLine SC 968; Lt. Col. Nitisha and Others v. Union of India WP(C) No. 1109 of 2020; 2021 SCC OnLine SC 261; Union of India v. Lt. Cd. Annie Nagaraja (2020) 13 SCC 1 : [2020] 10 SCR 433 – relied on.*

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Case Law Reference

[2020] 3 SCR 833 relied on Para 12

[2020] 10 SCR 433 relied on Para 32

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.79-82 of 2012.

From the Judgment and Order dated 11.08.2011 of the High Court of Delhi at New Delhi in Wp (C) No.5073 and 5077 of 2010 and dated 27.09.2011 in Review Petition No.546 and 550 of 2011 in WP (C) No.5073 and 5077 of 2010.

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With

Civil Appeal Nos.192-196, 83-84 And 5164 of 2012.

D Ms. Meenakshi Arora, R. Balasubramanina, Sr. Advs., Ms. Anshula Vijay Kumar Grover, Rakesh Kumar, Ms. Archana Pathak Dave, Ms. Chitrangda Rastravara, Avnish Dave, Pramod Kumar Vishnoi, Aishwary Mishra, Dashrath Singh, Ms. Gunjan Negi, Shiv Autar Singh Sengar, Manvendra Singh, Abhijeet Singh, Aditya Pratap Singh Chauhan, K. Parameshwar, Ms. Arti Gupta, Ms. Garima Sachdeva, Deepak Goel, Sudhanshu S. Pandey, Gaichangpou Gangmei, Arjun D. Singh, Yashvir Kumar, Santosh Kr., Akshay Amritanshu, Mohd. Akhil, Sachin Sharma, E Arvind Kumar Sharma, Anupam Raina, Sridhar Potaraju, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

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1. The batch of appeals which forms the subject matter of the present dispute emanates from a judgment of the Delhi High Court dated 11 August 2011. The High Court in its lead judgment dated 12 March 2010 in **BabitaPuniya's** case¹ issued specific directions for considering women Short Service Commissioned Officers² in the Air Force and in the Army for the grant of Permanent Commission³. Following the decision of the Delhi High Court in **BabitaPuniya**, a batch of writ petitions under Article 226 of the Constitution of India came to be instituted before the

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¹*BabitaPuniya v. Secretary &Anr*, (2010) 168 DLT 115 (DB)

² "SSCOs"

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³ "PC"

Delhi High Court seeking the benefit of the *Babita Puniya* judgment. The Delhi High Court by its judgment dated 11 August 2011 dismissed the batch of six writ petitions. The High Court held that the petitioners who had moved the specific proceedings were not covered by the directions contained in Paragraph 61 of the earlier decision in *Babita Puniya*. This batch of appeals has questioned the manner in which the decision of the Delhi High Court in *Babita Puniya* has been implemented by the Indian Air Force.

Brief Background

2. The appellants are women officers who joined the Indian Air Force⁴ as SSCOs between 1993 and 1998. They were appointed in terms of a circular dated 25 November 1991 issued by the IAF which provided that the officers would initially be granted Short Service Commission⁵ for a period of five years, at the end of which they would be considered for the grant of Permanent Commission⁶ subject to suitability and availability. The circular noted that women officers who were unwilling to opt for PC but sought extension would be granted an extension for six years. The terms and conditions, as referred to in paragraph 4 of the Circular dated 25 November 1991, specified the tenure of engagement in the following terms:

“Clause 5: Tenure of Engagement: Initial engagement period would be for 5 years from the date of commissioning. On completion of this period, the officer may opt for PC or another SCC tenure of 6 years. The officers seeking such extension will not be eligible for PC. Grant of extension or PC would be subjected to suitability and requirement of the Air Force.

Clause 6: Permanent Commission: SSC Officers granted PC will be eligible for all benefits/privileges, which are admissible to the regular PC Officers”

3. The Indian Air Force issued advertisements pursuant to the policy circular inviting applications from women to join as SSCOs, with a representation that the women officers would be initially granted SSC for a period of 5 years, but at the end of tenure, PC would be granted subject to vacancies and suitability of the officer. The relevant portion of the advertisement is extracted below :

⁴ “IAF”

⁵ “SSC”

⁶ “PC”

A *“A Unique opportunity for dynamic young girls: march to a new horizon as a commissioned officer in the Indian Airforce training:*

...

B *TENURE OF ENGAGEMENT: Initial engagement would be for a period of 5 years from the date of commissioning with the provision to opt for PC or another tenure of six years. Grant of permanent commission depend upon vacancy and suitability of the officer.”*

C *CAREER PROSPECTS: SSC Officers will be entitled for promotion under conditions as applicable to Permanent Commissioned officers of Non-Tech Ground Duties Branches.”*

D 4. However, after rendering five years of service, the authorities offered an extension of a period of six years to all the women officers, including the appellants. Their cases for the grant of PC were not considered at that stage. However, the Indian Air Force, considered only male officers for PC. Women were excluded.

E 5. In 2003, a Public Interest Litigation was instituted before the High Court of Delhi by Babita Puniya, an advocate, for the grant of PC to women SSC Officers, highlighting the gender discrimination being meted out to women officers in the armed forces. Some of the SSCOs belonging to the Army and the Air Force were also impleaded as co-petitioners through various writ petitions. However, the appellants had not filed any writ petitions during these proceedings.

F 6. On 10 September 2004, a policy was promulgated for the grant of PC to SSCOs with a rider that “Permanent Commission” would not be offered to Women Short Service Commission Officers.

G 7. By a policy issued in 2006, the respondents decided to stop PC to all SSCOs irrespective of gender, due to cadre management considerations. On 25 May 2006, a policy was issued by which provision of PC to male officers was discontinued and the stipulation of women officers for consideration of PC as mentioned in the policy circular of 1991 was withdrawn. The policy circular dated 25 May 2006 only provided for a further extension of Commission to SSCOs. The

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corresponding Human Resources Policy⁷ specified the Qualitative Requirements⁸ for extension of service. Accordingly, the QR for grant of a second extension of service was increased from a minimum average of 6.5 to 7.0 in the last three annual reports.

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8. In terms of the HRP dated 25 May 2006, some of the appellants qualified and were granted a second extension of Short Service Commission for the period 2003-2008, and were later released during the period between 2007 and 2010, having rendered the maximum permissible service. Some of the appellants could not be considered for second extensions since they did not meet the higher QR of getting a minimum average of 7.0 in their last three years, and were released after serving the IAF for 11 years between the years 2007 and 2009.

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9. Finally, on 26 September 2008, the President of India sanctioned a policy decision to offer PC prospectively to women officers across the three armed forces in select branches, specifically the JAG Department and the Army Education Corps of the Army and their corresponding branches in the Indian Navy and Air Force, along with the Accounts Branch of the Air Force and Naval Constructor in the Indian Navy.

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10. In *Babita Puniya's* case, the Division Bench of the High Court of Delhi decided all the writ petitions by a judgment dated 12 March 2010. The principal grievance of the women SSCOs was that by denying them PC, they had been subjected to gender discrimination. While allowing the writ petitions, the High Court held that on grounds of gender equality under Articles 14, 16 and 21 of the Constitution of India and the doctrine of legitimate expectation, women SSCOs (in certain branches), who were commissioned prior to 2006, were entitled to be considered for PC at par with male SSCOs along with consequential benefits. The High Court observed:

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“52. The women Air Force officers joined the service on the assurance as held out to them in terms of the Circular dated 25.11.2009 read with its appendix and as advertised for their recruitment. A representation was made to them that though they were initially to be granted a SSC for a period of 5 years, they were entitled to a PC so long as they were willing and subject to their suitability. The women officers opted for PC but despite this fact only their SSC was extended.

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⁷ “HRP”

⁸ “QRs”

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- A **53.** As noticed above neither is the question of suitability nor the absence of requirement in doubt which was the twin condition even as per Clause (v) of the appendix. Once male officers who had been granted PC, there could be no question of absence of requirement of officers for PC. The advertisement also held out a promise to the women Air Force officers of grant of PC depending upon two factors, which are:
- B (i) Vacancy.
(ii) Suitability of the officers.
- C **54.**
- 55.** Once these two conditions are satisfied, which is so in the present case, the women Air Force officers cannot be denied PC on the specious plea that the SSC was only on experimental basis and there was no entitlement to PC despite satisfaction of the two terms and conditions.
- D **56.**
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- E **58.** The doctrine of legitimate expectation as observed in various judgments referred to aforesaid is granted on the rule of law as requiring regularity, predictability and certainty in Government dealings with the public, operating both on procedural and substantive matters. The fair play would be the expectation from the Government.”
- F 11. The High Court issued the following directions in Paragraph 61 of the judgment:
- G **“61.** We are, thus, of the considered view that the following directions are required to be issued:
- i. The claim of absorption in area of operation not open for recruitment of women officers cannot be sustained being a policy decision.
- ii. The policy decision not to offer PC to Short Service Commissioned Officers across the board for men and women being on parity and as part of manpower management exercise is a policy decision which is not required to be interfered with.
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iii. The Short Service Commissioned women officers of the Air Force who had opted for PC and were not granted PC but granted extension of SSCs and of the Army are entitled to PC at par with male Short Service Commissioned officers with all consequential benefits. This benefits would be conferred to women officers recruited prior to change of policy as (ii) aforesaid. **The Permanent Commission shall be offered to them after completion of five years. They would also be entitled to all consequential benefits such as promotion and other financial benefits. However, the aforesaid benefits are to be made available only to women officers in service or who have approached this Court by filing petitions and have retired during the course of pendency of the petitions.**

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iv. It is made clear that those women officers who have not attained the age of retirement available for the Permanent Commission officers shall, however, be reinstated in service and shall be granted all consequential benefits including promotion, etc. except for the pay and allowances for the period they have not been in service.

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The necessary steps including release of financial benefits shall be done by the authorities within two (2) months of passing of this order.”

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12. The decision of the High Court was questioned in appeal by the Army authorities and by the Union of India. This led to the decision of this Court reported in *Secretary, Ministry of Defence versus Babita Puniya and Others*.⁹ The following directions were issued by this Court:

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“87. We accordingly take on record the statement of policy placed on the record in these proceedings by the Union Government in the form of the Letter dated 25-2-2019 and issue the following directions:

87.1 The policy decision which has been taken by the Union Government allowing for the grant of PCs to SSC women officers in all the ten streams where women have been granted SSC in the Indian Army is accepted subject to the following:

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⁹ (2020) 7 SCC 469

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- A 87.1.1 All the serving women officers on SSC shall be considered for the grant of PCs irrespective of any of them having crossed fourteen years or, as the case may be, twenty years of service.
- 87.1.2 The option shall be granted to all women presently in service as SSC officers.
- B 87.1.3 Women officers on SSC with more than fourteen years of service who do not opt for being considered for the grant of the PCs will be entitled to continue in service until they attain twenty years of pensionable service.
- C 87.1.4 As a one-time measure, the benefit of continuing in service until the attainment of pensionable service shall also apply to all the existing SSC officers with more than fourteen years of service who are not appointed on PC.
- 87.1.5 The expression “in various staff appointments only” in Para 5 and “on staff appointments only” in Para 6 shall not be enforced.
- D 87.1.6 SSC women officers with over twenty years of service who are not granted PC shall retire on pension in terms of the policy decision.
- 87.1.7 At the stage of opting for the grant of PC, all the choices for specialisation shall be available to women officers on the same terms as for the male SSC officers. Women SSC officers shall be entitled to exercise their options for being considered for the grant of PCs on the same terms as their male counterparts.
- E 87.2 We affirm the clarification which has been issued in sub-para(i) of Para 61 of the impugned judgment and order of the Delhi High Court.
- F 87.3 SSC women officers who are granted PC in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits. However, these benefits would be made available to those officers in service or those who had moved the Delhi High Court by filing the writ petitions and those who had retired during the course of the pendency of the proceedings.”
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- H 13. The grant of PC to women SSCOs is no longer *res integra* in so far as the Air Force is concerned since the judgment of the Delhi

High Court was not challenged before this Court by the Indian Air Force. As a matter of fact, the judgment was said to be implemented by the IAF for only those officers who were in service as on 12 March 2010 or those retired/ released officers who were not in service as on 12 March 2010 but had filed writ petitions before their release. Forty-four women SSCOs (twenty-three who had been released and twenty-one who were then serving) were considered for the grant of PC. A total of forty-one women SSCOs were granted PC. Three women SSCOs intimated their unwillingness.

14. The appellants were left out from the reinstatement plan of the IAF as they were all released from service prior to 12 March 2010 and had not filed writ petitions independently prior to the lead judgment in *Babita Puniya's* case. Without any undue delay, the appellants immediately approached the Delhi High Court challenging the manner of implementation of the decision in *Babita Puniya's* case by the IAF.

15. The Delhi High Court in the impugned judgment dated 11 August 2011 held that the benefit of the *Babita Puniya* judgment was limited to those women officers who were still in service when the writ petition was decided or those who had approached the Court by filing petitions but had retired during the pendency of the proceedings in *Babita Puniya's* case. The High Court further noted that if the benefit of the directions in *Babita Puniya's* case were to be extended to all women officers who were inducted as SSCOs, the directions issued would have to be recalled since the grant of a PC was subject to the twin requirements of suitability and availability of vacancies. By an order dated 27 September 2011, the Delhi High Court dismissed the review petitions filed against the impugned judgment.

Submissions

16. We have heard Mr Krishnan Venugopal, Mr Huzefa A Ahmadi and Ms Meenakshi Arora, senior counsel appearing on behalf of the appellants, and Mr R Balasubramanian, senior counsel appearing on behalf of the respondents.

17. Five submissions have been urged on behalf of the appellants in support of the challenge to the judgment of the High Court:

- i. Though the appellants were not parties to the proceedings before the High Court which resulted in the decision in *Babita Puniya* and would hence not be governed by

- A paragraph 61(3) of the operative directions, they would fall within the purview of paragraph 61(4), which is an additional category over and above the category specified in paragraph 61(3);
- B ii. The appellants had a legitimate expectation in terms of the prevailing policy circular dated 25 November 1991 and the advertisement in pursuance of which they were recruited that they would be considered for the grant of PC at the end of five years of service but they were deprived of their legitimate expectation;
- C iii. Following the decision of the High Court in *Babita Puniya*, the claim of the women SSCOs was required to be considered in terms of the Human Resources Policy promulgated by the IAF on 19 November 2010 but consideration has not taken place in pursuance of the applicable policy circular;
- D iv. In applying the Qualitative Ratings for considering the women SSCOs for the grant of PC, a crucial aspect is that at the relevant time such officers were not entitled to the grant of PC in view of the policy circular dated 10 September 2004, consequent upon which the QRs were assessed on a casual basis without due application of mind; and
- E v. In any event, should this Court come to the conclusion that the women SSCOs cannot be reinstated in service at this point of time having regard to the years which have elapsed since they have been released from service, they should be granted pensionary benefits in terms of the decision in *Secretary, Ministry of Defence v. Babita Puniya* rendered by this Court in the exercise of its jurisdiction under Article 142 of the Constitution of India.
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- G 18. Controverting these submissions, Mr R Balasubramanian, senior counsel appearing on behalf of the respondents submitted that:
- H i. The appellants were neither serving in the IAF on 12 March 2010 when the judgment of the Delhi High Court in *Babita Puniya* was rendered nor had they approached the High Court while they were in service. As a consequence, none of the appellants are governed by the operative directions

contained in paragraph 61 of the judgment of the Delhi High Court in ***Babita Puniya***; A

- ii. The IAF has duly complied with the operative conditions contained in the decision in ***Babita Puniya*** rendered by the High Court by considering forty-four women SSCOs of whom forty-one were granted PC; B
- iii. During the pendency of these proceedings, by an interim direction, this Court directed the IAF to consider the plea for reinstatement subject to the women SSCOs meeting the QRs reflected in the policy of 2007. Accordingly, the cases of fourteen appellants were considered in terms of the order dated 20 February 2013 passed by this Court. Eight women SSCOs were reinstated while the rest were not found to be suitable; others had expressed their unwillingness; and yet others failed to meet the medical criteria; C
- iv. Subsequent to the above interim order, this Court on 23 August 2013 and 27 September 2013 declined to grant interim relief to other officers; D
- v. On the date of the order of the High Court dated 12 March 2010, there were 811 SSCOs of whom 348 had been released while 463 were serving. While implementing the judgment of the Delhi High Court, the Government of India and the Ministry of Defence issued orders on 5 August 2011 in terms of which 463 serving SSCOs (88 male and 375 female) were considered for PC in addition to the 44 women SSCOs who had already been considered for the grant of PC under the judgment of the Delhi High Court. Out of these 463 officers, 371 SSCOs were granted PC comprising of 70 men and 301 women; and E
- vi. There has been no discrimination between men and women officers in terms of the application of the QR requirements in considering their claims for the grant of PC. The uniform QR requirement of 6.5 has been applied across the board to both men and women SSCOs as reflected in the following tabular chart: F

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A	AOP Directive	Minimum AR Requirement for Extension		Minimum AR Requirement for Grant of PC	
		Average	Mandatory Qualities	Average	Mandatory Qualities
	AOP Directive 01/98	5.5 in last two years reports	5.0	6.5 in last two years reports	6.0
B	HRP 04/04	(a) 6.00 in last three Ars for officers from Rationalised scheme and who are already on first Extn of other scheme. (b) 6.0 in last two Ars for officers who are in initial term of Pre-Rationalised scheme.	6.00	(a) 6.50 in last three Ars for officers from Rationalised scheme and who are already on first Extn of other scheme. (b) 6.5 in last two Ars for officers who are in initial term of Pre-Rationalised scheme.	
C	HRP 21/06	(a) 1 st Extn – 6.5 in last three Ars (b) 2 nd Extn – 7.00 in last three Ars	6.00	Nil	Nil
D	HRP 11/07	(a) Pre-Rationalised scheme:- 1 st Extn – 6.5 in last three Ars (b) 2 nd Extn – 7.00 in last three Ars (b) Rationalised scheme – 7.00 in last three Ars	6.00	Nil	Nil
E	HRP 04/10	Nil	Nil	6.50 in Ars preceeding three years prior to 25 May 06	6.00
F	HRP 04/10	Nil	Nil	<u>Pre Rationalised Scheme.</u> Should have either of the following:- (a) At Initial Extn (i) Minimum average of 6.50 in the last two Ars (for those who were due for extension prior to 09 Sep 04)/ last three Ars (for those who were due for extension on/after 10 Sep 04) prior to the end of initial term of engagement. OR <u>At Second Extn</u> Minimum average of 7.00 in last three Ars prior to Second extension <u>Rationalised Scheme</u> Should have Minimum average of 7.00 in last three Ars prior to the end of initial term of engagement.	6.00
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Analysis

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19. The principal issue which falls for determination turns on the interpretation of paragraphs 61(3) and 61(4) of the decision of the Delhi High Court in **Babita Puniya**. The decision of the High Court eventually resulted in a judgment of this Court, as already noted above. The IAF did not challenge the judgment of the Delhi High Court dated 12 March 2010, unlike the Army authorities which were in appeal before this Court. The IAF authorities have purported to implement the judgment. The issue which falls for determination is whether the judgment has been duly observed.

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20. Paragraph 61(3) of the judgment of the Delhi High Court provided that women SSCOs of the IAF who had opted for PC but were not granted PC but allowed only an extension of their Short Service Commissions were entitled to PC at par with men SSCOs with all consequential benefits. PC was to be offered to them after the completion of five years. This will cover consequential benefits including promotion and other financial benefits. However, the benefits were to be made available only to those women officers who were in service and to those who had approached the High Court by filing petitions though they had retired during the course of the pendency of the petitions. In other words, paragraph 61(3) covers two categories:

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- i. Serving women SSCOs as on the date of the judgment; and
- ii. Women SSCOs who had instituted writ petitions before the High Court but who had retired during the course of the pendency of the petitions.

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21. The reference to the expression “retired” has to be construed as a release from service as accepted on both sides during the course of the hearing, since the SSCOs were governed by a release from service following the initial tenure of five years followed by two extensions of six years and four years, respectively.

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22. Paragraph 61(4), according to the submission of the appellants, postulates an additional category of officers who would not fall within the ambit of paragraph 61(3). This submission has been opposed by Mr R Balasubramanian, senior counsel appearing on behalf of the respondents who urges that paragraph 61(4) is clarificatory in nature.

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23. Before we resolve the area of contentious dispute, it would be appropriate to advert to the reasoning contained in paragraph 16 of the impugned judgment which reproduces paragraph 60 of the earlier

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A decision. Paragraph 60 of the decision of the Delhi High Court in *BabitaPuniya* is extracted below:

B “60. A PC carries with it certain privileges of rank including pension. These women officers have served well the Armed Forces of the country in the areas of operation they were recruited for and have worked in this capacity for 14 to 15 years. They deserved better from the respondents. There is no reason why these persons who have knocked the door of the court should be deprived of their benefit and the benefit extended only in future for grant of PC to women. **It is not as if a complete chapter can be opened by persons who have chosen to accept the SSC and on completion of period decided to go out of service. The benefit is only available to serving officers and the ones who knocked the court but during the period of consideration of the matter retired from service.** Lt would have been in the fitness of things if the respondents having taken the decision to offer PC prospectively should have favourably examined as a policy itself, the plea of the petitioners who were in service or retired from service during pendency of petition to grant them an equivalent benefit. In matters of gender discrimination a greater sensitivity is expected and required.”

E 24. The above observations of the Delhi High Court make it abundantly clear that at that stage, it was inclined to grant the benefit to:

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- i. Serving officers; and
 - ii. Officers who had moved the Court, but had retired or been released from service during the pendency of the proceedings.

G 25. The operative directions cannot be read in a manner isolated from the main text of the judgment, which is evident from the intent underlying the ultimate directions. This interpretation of the decision of the Delhi High Court is also reinforced by the operative directions which were issued by this Court in *Secretary, Ministry of Defence v. BabitaPuniya*, in the batch of appeals arising from the judgment of the Delhi High Court at the instance of the Army authorities. This Court observed that the directions of the Delhi High Court in its judgment dated 12 March 2010 envisaged that the benefits were to be made available to those “women officers in service who had instituted

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proceedings before the High Court and had retired during the pendency of the writ petitions”, and that by virtue of direction (iv), it was envisaged that those women officers who had not attained the age of superannuation for PC officers would be reinstated with all consequential benefits. In paragraph 87 of its judgment, this Court observed as follows:

“87.3 SSC women officers who are granted PC in pursuance of the above directions will be entitled to all consequential benefits including promotion and financial benefits. However, these benefits would be made available to those officers in service or those who had moved the Delhi High Court by filing the writ petitions and those who had retired during the course of the pendency of the proceedings.”

26. In other words, it was clarified that the benefits would extend to those officers who were in service and to those who had moved the Delhi High Court by filing writ petitions and had retired during the pendency of the proceedings. Hence, it is not possible to accept the wider submission which has been urged on behalf of the appellants that they were expressly covered by para 61 of the decision of the Delhi High Court in *Babita Puniya*.

27. The issue which falls for determination as to whether the appellants stand in the same position as the officers who were governed by the decision in *Babita Puniya*.

28. It needs to be emphasized that the entire litigation initially was pursued in the form of a PIL which was moved by an advocate. During the pendency of the proceedings, officers of the Air Force and the Army joined in the proceedings. The appellants are all officers who are in service since their initial appointment in 1993. In terms of the policy circular which held the field as well as the advertisements in pursuance of which they were recruited, they were under a legitimate expectation that they would be considered for the grant of PC at the end of five years. However, they were not offered PC and were instead granted extensions in service.

29. A person is said to have a reasonable or legitimate expectation if a representation or a promise made by an authority, either expressly or impliedly, gives room for such expectation in the normal course. While applying the doctrine of legitimate expectation, the primary considerations are reasonableness and fairness of the state action. In *State of*

A *Jharkhand v. Brahmaputra Metalics Ltd., Ranchi*,¹⁰ this Court speaking through of one us (D.Y. Chandrachud J)elaborated on the doctrine of legitimate expectation in the following terms:

B “45. ...The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts.”

C 30. In the present case, the appellants had a legitimate expectation since the respondents by their representations in the policy circular dated 25 November 1991 and in published advertisement screated expectations among the women SSCOs regarding the grant of PC on completion of five years of service, subject to vacancies and suitability. All the women officers were eligible to be considered for grant of PC between years D 2000 to 2003, but they were only given an extension of SSC in teeth of the legitimate expectation which was held out in the initial terms and conditions of appointment. The male counterparts of the appellants were considered for and granted PC after their five years of service. The women SSCOs continued to be under a legitimate expectation that their E extended SSC tenure would be converted into a PC as they were induced in service with a specific representation of being considered for PC. The Delhi High Court in the *Babita Puniya* judgment dated 12 March 2010 had also applied the doctrine of legitimate expectation and observed that the doctrine of legitimate expectation, grounded in the rule of law, required regularity, predictability and certainty in government dealings F with the public, operating on procedural and substantive matters.

G 31. Most of these officers joined service between 1993 and 1998 and were eventually released from service between December 2006 and 2009. They have put in long years of service for the IAF. During the course of the hearing, the Court has been fairly apprised on behalf of the Air Force authorities that the officers have an excellent track record.

32. In this backdrop, we are of the view that this batch of officers who moved the Delhi High Court soon after the decision in *Babita Puniya* and within a reasonable period from the date of their release should not

H ¹⁰ Civil Appeal Nos. 3860-3862 of 2020; 2020 SCC OnLine SC 968

be denied the benefit which emanates from that judgment. At the same time, the Court cannot be oblivious of the fact that the officers have been released from service on diverse dates between December 2006 to December 2009. Reinstatement in service would not therefore be a viable option particularly having regard to the exigencies of service in an armed force of the nation. However, following the logic of the earlier decision of this Court in *Secretary, Ministry of Defence v. Babita Puniya*, we are of the view that the officers should be considered for the grant of pensionary benefits. This direction shall emanate in exercise of the jurisdiction of this Court under Article 142 of the Constitution of India to bring about complete and substantial justice and remove the pernicious effects of gender discrimination which had taken place in the past in the Indian Air Force. The extra-ordinary constitutional power entrusted under Article 142 has been earlier invoked by this Court in *Secretary, Ministry of Defence v. Babita Puniya, Lt. Col. Nitisha and Others v. Union of India*,¹¹ and *Union of India v. Lt. Cd. Annie Nagaraja*¹² to compensate and/or grant pensionary benefits to women officers, belonging to the Army and Navy, in the interest of justice.

33. The officers shall be considered for the grant of PC on the basis of the HRP dated 19 November 2010. The policy document specifically enunciates the QRs for the grant of PC to women SSCOs in the following terms:

“5. **Qualitative Requirements (QRs.)** - Q.Rs for grant of PC in respect of SSC Women officers would be as follows: -

(a) **No of ARs.** ARs of the preceding three years prior to 25 May 06 would be considered for grant of PC.

(b) **AR Grades.** For grant of PC an officer must have Minimum average grading of 6.5 in the three ARs under consideration. For the grant of PC, an officer must have a minimum grading of 6 (in ARs under consideration), in each of the professional and behavioral factors listed below

(i) **Professional Factors**

(aa) Professional Knowledge.

(ab) Job proficiency.

¹¹ WP(C) No. 1109 of 2020; 2021 SCC OnLine SC 261

¹² (2020) 13 SCC 1

- A (ii) Behavioral Factors
 (aa) Integrity and Loyalty.
 (ab) Dependability and Sense of Responsibility.
 (ac) Courage (Physical and Moral)
- B The policy also specifies other requirements including medical conditions.”
- Directions**
34. We accordingly order and direct as follows:
- C i. All the women SSCOs governed by the present batch of cases shall be considered for the grant of one-time pensionary benefits on the basis that they have completed the minimum qualifying service required for pension;
- ii. The cases of the appellants shall be evaluated on the basis of the HRP dated 19 November 2010 bearing Part No 5; and
- D iii. The officers who are found eligible for the grant of pensionary benefits in terms of the present direction shall not be entitled to any arrears of salary, but the arrears of pension shall be payable with effect from the date on which the officers are deemed to have completed twenty years of service;
- E iv. We also clarify that we have dismissed several other petitions filed by officers who had moved the Delhi High Court after a considerable degree of delay following their release from service; and
- F v. In the present batch of cases, there are three officers who have scored QRs between 6.29 and 6.41. The case of these officers shall be considered sympathetically by the Air Force authorities on the same footing.
35. The civil appeals are accordingly disposed of in the above terms.
- G 36. Pending applications, if any, stand disposed of.