

ITEM NO.101

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.7417/2010

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

MAJ. GEN USHA SIKDAR

Respondent(s)

(With office report)

WITH W.P.(C) No.744/2016

(With appln.(s) for permission to file synopsis and list of dates and office report)

W.P.(C) No.806/2015

(With appln.(s) for stay and permission to file additional documents and amendment of prayer portion and office report)

Date : 29/03/2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant(s) Mr. R. Balasubramanian, Adv.  
Mr. S.A. Haseeb, Adv.  
Mr. Prabhas Bajaj, Adv.  
Mr. Akshay Amritanshu, Adv.  
Mrs. Anil Katiyar, AOR  
Mr. M.K. Maroria, Adv.

Mr. Colin Gonsalves, Sr. Adv.  
Mr. Tanya Agarwal, Adv.  
Mr. Satya Mitra, AOR

For Respondent(s) Mr. Colin Gonsalves, Sr. Adv.  
Mr. Harish Pandey, AOR  
Mr. P.D.P. Deo, Adv.

Mr. Rakesh Dahiya, AOR

Mr. Mukesh Kumar Maroria, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Ordinarily, we would have addressed the controversy regard being had to the provisions contained in the Army Act, 1950 (for short, 'the 1950 Act') and Indian Nursing Military Services Ordinance, 1943, but in the course of hearing, it was submitted by Mr. R. Balasubramanian, learned counsel appearing for the Union of India that after delivery of the impugned order, the Armed Forces Tribunal, New Delhi (for short, 'the tribunal') vide judgment dated 22<sup>nd</sup> February, 2011, in O.A. No.576 of 2010 has taken a different view and dismissed the claims of the likes of the respondents. Learned counsel would submit that the controversy has been put to rest by a two-Judge Bench decision in Jasbir Kaur and Others vs. Union of India and Others (2003) 8 SCC 720.

Mr. Colin Gonsalves, learned senior counsel and Mr. P.D.P. Deo, learned counsel appearing for the respondents would submit that the judgment in Jasbir Kaur (*supra*) requires reconsideration, inasmuch as the Court has been guided in entirety by the provisions contained in the Indian Military Nursing Services Rules, 1943, though the same has been impliedly repealed. It is their stand that they have been appointed and further promoted under the 1950 Act and, in any case, the Ordinance would not be applicable to them.

In the course of hearing, we have been apprised that when the matter was pending before the High Court, it has directed a "High Level Committee" to look into the grievances

of the respondents. After coming into force of the Armed Forces Tribunal Act, 2007 (for short, 'the 2007 Act'), the writ petition stood transferred to the tribunal and the impugned judgment came to be passed. We have also been apprised that the report of the Committee consisting all the heads of three Services, was submitted some time in the year 2006.

What is urged before us by the respondents is that there are series of Gazette notifications and the orders passed in the name of the President of India and other competent authorities conferring the equal status to the members of the Military Nursing Services. The claim is that a time has come that they should be treated as part of the regular army regard being had to the concept of gender justice and affirmative provisions enshrined under the Constitution of India. Additionally, it is canvassed that they would come within the category of combatant, since at the time of war or other difficult times, they have to go and take care of the soldiers or other injured persons at the cost of their life. It is also contended that there are circumstances when they are some times required to go into the war zone to look after the severely injured persons for the purpose of nursing. In essence, the contention is when there is rendition of such priceless service, there should not be denial of benefit.

In view of the aforesaid submissions and keeping in view the fact that the report was submitted a long back, we would like the heads of the three Services to meet for the purpose of having a fresh look into the aspects as is put forth before us and send their decision/recommendation to the Government and upon which the Government shall take a

decision. We are sure that the three heads of the Services shall take into consideration the concern expressed by the respondents with regard to their status, equality and duty. We may only add that the Committee so constituted shall remain sensitive to the issues and, if necessary, may give suggestions for necessary steps to be taken by the Union of India. While taking the decision, the Committee need not be guided by any of the impugned orders, for their duty basically would be to deal with the grievances of the respondents for the purpose of amelioration, if it is possible. As we are reconstituting the Committee, we request the Committee to take a decision within a period of two months and we expect that the Government shall not take any decision on the basis of the earlier report and will await the receipt of the report of the newly constituted Committee.

Let the matter be listed in the last week of July, 2017.

(Chetan Kumar)  
Court Master

(Madhu Narula)  
Court Master