Germina Peter Vs Chief of Naval Staff

Court: Andhra Pradesh High Court

Date of Decision: Oct. 24, 2014

Acts Referred: Administrative Tribunals Act, 1985 â€" Section 14, 17, 2(ra)
Constitution of India, 1950 â€" Article 14, 16
Navy Act, 1957 â€" Section 184

Citation: (2015) 3 ALD 539 : (2015) 4 ALT 487

Hon'ble Judges: Sanjay Kumar, J

Bench: Single Bench

Advocate: P.B. Vijaya Kumar, Advocate for the Appellant; B. Narayana Reddy, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sanjay Kumar, J.
The petitioner was appointed as a Nurse in the Naval Family Clinic, Nausena Baugh, Visakhapatnam, in the year 1973

on a consolidated honorarium of Rs. 300/- per month. By way of this writ petition, she initially challenged the proceedings dated 29.09.1999,

whereby the naval authorities rejected her request for absorption into regular service. She also sought a consequential direction to treat her as a

regular Staff Nurse with effect from the date of her initial appointment by extending to her pay scale and other benefits on par with regular Staff

Nurses of the department.

2. During the pendency of this writ petition, the petitioner was terminated from service under proceedings dated 27.06.2009 on age ground, long

after she attained the age of superannuation in August, 2008. At that time, her salary was Rs. 2,300/- per month.

3. By way of an amendment to her prayer in this writ petition, effected after her termination from service, the petitioner sought a further direction to

extend to her benefits under the Automatic Career Progression Scheme; differential salary for the post superannuation period; all terminal benefits,

including pension and gratuity, along with interest on such delayed payment.

4. Exchange of affidavits by the parties over the years having resulted in a multitude of pleadings, the contents thereof are summarized hereunder:

5. The petitioners case as set forth in her writ affidavit: The Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam, issued

Temporary Memo No. 109/73 dated 06.08.1973 through the Chief Staff Officer (Personnel & Administration)(P & A), acting for the Flag Officer

Commanding-in-Chief, inviting applications for the posts of a Full Time Lady Doctor and a qualified Nurse in the subject Naval Family Clinic. The

posts were initially for a period of one year but were stated to be likely to continue. The Notification specified, under Clause (e) relating to

Administration/Control, that the appointees would be subject to administrative control and discipline by the Headquarters, Eastern Naval

Command. It was also specified that the duties of the Family Clinic assigned to them by the Commanding Officer, Indian Naval Hospital Ship

(INHS) Kalyani, should be strictly adhered to as per the Instructions/Orders issued from time to time.

6. It was pursuant to this Notification that the petitioner applied and was thereafter appointed. After she completed one year of service, the Chief

Staff Officer (P & A), acting for the Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam,

issued proceedings dated 30.08.1974, informing her that from 01.09.1974 her pay scale would be Rs. 12551657200/- with DA of Rs. 15/-,

HRA of Rs. 20/-, Uniform Allowance of Rs. 6.25 ps., Washing of Rs. 3/- and Messing of Rs. 60/- per month. She was however informed that

until further orders, she would continue to draw a consolidated honorarium of Rs. 300/- per month, so that her emoluments were not reduced.

7. The petitioner was given permanent security pass dated 09.01.1975 and her scale was thereafter revised as per the Revised Pay Scales issued

from time to time, that is, in the years 1975, 1985 and 1989. At the time this writ petition was filed, she was drawing a total salary of Rs. 1,750/-

per month. She appealed to the respondent authorities to consider her case for permanent absorption as the Family Clinic was an integral part of

INHS Kalyani. She stated that the Family Welfare Clinic was also maintained by the naval authorities and the staff working there was paid higher

salaries as compared to those working at the Family Clinic. She pointed out that the Staff Nurse at the Family Clinic also had to attend to and

perform the duties of the Lady Health Visitor, a regular post at the Family Welfare Clinic, during the absence of the incumbent and also carry out

her duties, like immunization, in addition to her own duties. Alleging discrimination when compared to employees of the Family Welfare Clinic, she

sought parity with them.

8. The petitioner stated that while matters stood thus, the Command Medical Officer, acting on behalf of the Flag Officer Commanding-in-Chief,

Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam, issued a letter on 31.03.1993 superseding the Headquarters letter

employing her as a Staff Nurse in the Family Clinic, Kalyani, on the terms and conditions agreed to earlier and intimating her that she would be

paid an honorarium of Rs. 1,250/- per month from 01.04.1993.

9. Aggrieved by this unilateral modification of the terms and conditions of her employment, the petitioner filed O.A. No. 302 of 1993 before the

Central Administrative Tribunal, Hyderabad. Therein, she sought a declaration that she was entitled for regular appointment and confirmation as a

Staff Nurse with effect from 01.09.1973 and to set aside the order dated 31.03.1993.

10. In the counter filed to this O.A., the Chief Staff Officer (P & A), speaking on behalf of the Flag Officer Commanding-in-Chief, Headquarters,

Eastern Naval Command, Naval Base, Visakhapatnam, stated that the Government had sanctioned Family Welfare Centers and Station Health

Organizations in addition to Naval Hospitals for providing requisite maternal and child health cover to the families of the naval personnel. However,

as it was found by the local naval authorities that the Government resources were not adequate to meet the growing needs, the local authorities set

up Family Clinics from out of Non-Public Funds. He stated that Family Clinics were not funded by the Government but from the funds generated

from the profits of naval canteens etc. The employees of such Family Clinics were stated to be temporary employees who were not Government

servants. The functioning of the Family Clinics was however admitted to have been under the supervision of INHS Kalyani initially and was

thereafter entrusted to Station Health Organizations. The petitioner was stated to have been paid an honorarium from the Command Amenities

Fund, a Non-Public Fund. This honorarium was stated to have been revised from time to time but was inadvertently termed as a pay scale. This

anomaly was said to have been rectified by the order dated 31.03.1993. It was denied that the petitioner was ever put on a regular pay scale with

allowances. The increments granted to the petitioner over the honorarium were said to have been misconstrued by her as a pay scale and it was

asserted that the intention at the time of her employment was only to grant her an honorarium which was thereafter increased from time to time.

11. It was further stated in the said counter that the petitioner and other persons engaged in the Family Clinic were clearly told that they would be

paid honorarium from Non-Public Funds and that they were engaged on a temporary basis. It was however admitted that the petitioner was asked

on several occasions to work at the Family Welfare Center by the Incharge of the Station Health Organization. This was stated to be a mistake

which, however, did not have the effect of changing the petitioners status. The counter concluded with the averment that the Tribunal had no

jurisdiction as the petitioner was not a Government Servant.

12. By order dated 29.01.1996, the Tribunal accepted the plea of the respondents that the petitioner did not come within the purview of Section

14 of the Administrative Tribunals Act, 1985, and held that it did not have jurisdiction to entertain her application. The Tribunal however extended

for a period of three months its earlier interim order dated 08.04.1993, whereby the respondents were directed not to terminate the services of the

petitioner if she did not express willingness to accept the terms and conditions of the order dated 31.03.1993. The O.A. was accordingly

dismissed on the ground that the Tribunal had no jurisdiction but holding that the said order of dismissal did not debar the petitioner from moving

the appropriate forum for the relief claimed in the O.A.

13. The petitioner thereupon filed W.P. No. 9359 of 1996 before this Court seeking a declaration that she was a regular Staff Nurse in the employ

of the Navy with effect from 01.09.1973; to nullify the order dated 31.03.1993; and to extend to her the scale and other benefits on par with

regular Staff Nurses of the Department, including promotions, with all consequential and attendant benefits. This writ petition was disposed of by a

learned Division Bench of this Court by order dated 30.12.1997. The Division Bench took note of the fact that the petitioner was not heard at the

time the order dated 31.03.1993 was passed and that the representations made by the petitioner and similarly placed employees were also not

considered. The respondents were accordingly directed to issue notice in the matter and pass appropriate orders within a time frame. The

petitioner was given liberty to make a representation to the authorities. Till the disposal of the representation made by the petitioner, status quo was

directed to be maintained. The respondents were also directed to consider the case of the petitioner for regularization and the petitioner was given

liberty to make a fresh representation to the authorities in this regard.

14. The petitioner thereupon submitted representation dated 23.02.1998 seeking regularization of her services. This representation was submitted

to the Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam. However, the Chief Staff

Officer (P & A), acting for the Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, rejected the representation of the

petitioner under order dated 29.06.1998. The reason for rejection, as is evident therefrom, was that the petitioner was not sponsored by the

Employment Exchange and was not interviewed for the post of Nurse/Staff Nurse against Government sanction. The order also recorded that the

Family Clinic, where the petitioner was appointed, was a Non-Public Fund Organization and that the petitioner was paid out of Non-Public Funds.

The petitioner was therefore said to have failed to make out a case for her regularization against Government Billet.

15. By virtue of the liberty given to her by this Court on 24.11.1998 in C.C. No. 1383 of 1998 to challenge the order dated 29.06.1998 before

the appropriate forum or higher authority as permissible under law, the petitioner preferred an appeal on 22.04.1998 to the Chief of Naval Staff,

Naval Headquarters, New Delhi. The petitioner complained therein that the Chief Staff Officer (P & A) had no authority to deal with her

representation and that he had failed to take into account that similarly placed persons in the category of Drivers as well as one T. Saroja

Sakkubai, a similarly placed Health Visitor, were converted as regular employees. She further pointed out that her appointment never disclosed the

source of her salary and that the same could not be a reason to deny her regularization in service on par with the others.

16. The said appeal was however rejected and the Surgeon Commander, Officer Incharge, Station Health Organization, INHS Kalyani Complex,

Visakhapatnam, under order dated 29.09.1999, informed the petitioner that her request for absorption in regular Government service had been

examined by the Naval Headquarters and the same was rejected as she was an employee of the Command Non-Public Fund.

17. Initially, this order was the cause for grievance for the petitioner to approach this Court by way of this writ petition.

18. The Chief Staff Officer (P & A), Office of the Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam,

filed the first counter-affidavit dated 11.07.2000 recounting the facts of the case. He reiterated that the petitioner was working at the Naval Family

Clinic, Visakhapatnam, and was paid out of Non-Public Funds only. As regards the issuance of a permanent identity card to the petitioner, he

stated that she had been issued the same so as to facilitate her admission to the Family Clinic which was located in a prohibited area. The extension

of pay scale to the petitioner was again stated to be an inadvertent mistake. He therefore justified the rejection of the petitioners appeal under

order dated 29.09.1999. As regards the petitioners contention that regularization in service was granted to similarly placed Non-Public Fund

salaried Drivers, he stated that she could not compare herself with them as they were subjected to a motor transport driver examination and

emerged eligible. They were therefore granted exemption from Employment Exchange sponsorship and regularized in service. As regards the case

of Saroja Sakkubai, he stated that her particulars and appointment were not relevant. He concluded by stating that the petitioner could not be

treated as a regular employee and that her prayer in this regard was liable to be rejected.

19. In her additional affidavit dated 21.12.2006, the petitioner stated as under: The Government of India delegated certain administrative/financial

powers to the lower administrative authorities for creation of need-based temporary establishments and for appointing staff to run them till the

Central Governments sanction was obtained to make such establishments and staff permanent. Under this provision, the Flag Officer

Commanding-in-Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam, had created the Naval Family Clinic at

Visakhapatnam under the control of the INHS Kalyani, Visakhapatnam, to reduce the heavy work load there, pending approval of its

permanency. This hospital was meant to attend to the health problems of serving and retired defence personnel and their families. An

announcement was made internally within the Navy, vide Visakha Temporary Memo (VTM) No. 109/73, by the Chief Staff Officer (P & A),

acting for the Flag Officer Commanding-in-Chief, Headquarters, Visakhapatnam, who was the competent appointing authority. The qualifications

required for a Nurse as per this Memo were as prescribed by the statutory rules, so that the Nurse appointed thereunder could be absorbed

permanently as and when Government sanction was received. An interview was conducted by a Board headed by the Chief Staff Officer (P & A)

at his office and after passing the medical fitness test in the Naval Hospital, Kalyani, the petitioner was appointed as a Nurse with effect from

01.09.1973 in the Naval Family Clinic. On her completing one year service, the post was regularized under letter dated 30.08.1974 and the

petitioner was placed in the pay scale of Rs. 125-5-167-7-200/- with DA, HRA, Uniform, Washing and Messing allowances. The petitioner was

also given a permanent pass in the place of the temporary pass which had been issued to her earlier. She therefore asserted that she was a

permanent employee of the defence civilian establishment since then.

20. As regards appointments made to Non-Public Fund Organizations, the petitioner stated that appointments to such organizations were given by

the Head of the Unit who maintained the Non-Public Fund Account. Such employees were given only temporary passes which were renewed

every quarter and were paid lump sum honorarium with 10 days leave per annum. She pointed out that she was not treated on par with such

employees since 1975 and she could not therefore be treated as an employee of a Non-Public Fund Organization. The petitioner stated that she

had applied under the Right to Information Act, 2005, for certain documents, including her initial appointment letter dated 01.09.1973, but the

same were not furnished to her. She pointed out that the Notification pursuant to which she had been appointed did not mention anything about the

alleged Non-Public Fund status of the appointment offered thereunder. She adverted to the control exercised over the Family Clinic by the naval

authorities and asserted that it was a Central Government Defence Civilian Establishment and not a Non-Public Fund Organization.

21. Thereafter, additional affidavit dated 26.02.2010 was filed by the Chief Staff Officer, (P & A), Headquarters, Eastern Naval Command,

Visakhapatnam, wherein he again stated that the Family Clinic was introduced as a welfare measure for the families of the service personnel and

that the petitioner had been engaged therein from the Non-Public Fund. According to him, the personnel of Family Clinics were paid honorarium,

as mutually agreed upon and subject to availability of funds. He denied the existence of a master servant relationship between the petitioner and the

Government of India. The petitioner was said to have been paid Rs. 1,250/- from 31.03.1993, which was thereafter revised on 01.04.1995 and

again on 01.07.1998. She was paid Rs. 2,300/- with effect from 01.04.2003. He reiterated that the petitioners honorarium was inadvertently

termed as a pay scale for some time. He however admitted that the Family Welfare Centre was a Government Organization and that employees

thereof were paid as per Government Orders. He asserted that mere equating of qualifications for the petitioners employment in the Family Clinic

with the statutory rules would not vest her with a right to claim regularization. He admitted that Family Clinics existed in all Naval Establishments

but asserted they were Non-Public Fund Organizations. A distinction was sought to be drawn between service conditions of Government

Organizations as compared to Non-Public Fund Organizations. Employees of Government Organizations were stated to have been recruited as

per the recruitment rules, whereas the petitioner was appointed in the Family Clinic, a Non-Public Fund Organization, as per the terms and

conditions of the Visakha Temporary Memorandum issued by the local authority. He concluded by stating that the petitioner, having accepted the

terms and conditions of her appointment and having joined a Non-Public Fund Organization, could not claim regularization of her services or other

privileges on par with regular Government Employees.

22. The material filed along with this additional affidavit makes for an interesting reading. A copy of the letter dated 12.04.1979 addressed by the

Commanding Officer, INHS Kalyani, to the Officer Incharge, Station Health Organization (SHO), Visakhapatnam, was produced, wherein the

proposal to transfer the Family Clinic Funds (Nausena Baugh) from INHS Kalyani to the Station Health Organization, Visakhapatnam, was

approved with effect from 30.04.1979. The letter recorded that prior to this transfer, the account was audited by a Board of Officers comprising

representatives of INHS Kalyani and SHO (V), and the Officer Incharge, SHO (V) was stated to be responsible for operating the Family Clinic

Fund (Nausena Baugh) in accordance with the prescribed financial canons and other existing orders for the maintenance of the said Fund Account.

The Fund was to be audited quarterly by the Officers and the Audited Balance Sheet was to be submitted to the INHS Kalyani. The Audit Cover

was to continue to be by the Commanding Officer, INHS Kalyani. This letter was signed by the Chief Staff Officer (P & A) acting for the Flag

Officer Commanding-in-Chief. Two Audit Certificates duly signed by various members of the audit team, including the Officer Incharge, Station

Health Organization, Visakhapatnam, were also filed.

23. When this matter was earlier heard at length by a learned Judge of this Court on 20.09.2012, the Flag Officer Commanding-in-Chief,

Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam, was directed to file a detailed affidavit, along with relevant documents,

furnishing information regarding the qualifications prescribed in the year 1973 and thereafter for appointment as Staff Nurse at the Naval Hospital,

Visakhapatnam; the pay scales extended to Staff Nurses from the year 1973 onwards including revision in such pay scales, if any; and whether

appointments were made to the posts of Staff Nurses in regular vacancies at the Naval Hospital, Visakhapatnam, after the appointment of the

petitioner in the year 1973. This affidavit was required as the learned Judge was of the opinion that it did not stand to reason that Staff Nurses at

the Family Clinic should be paid a mere consolidated monthly pay, a paltry sum at that, while the Staff Nurses at the Naval Hospital were paid

regular scales of pay unless the qualifications prescribed for appointment to the two posts were distinct and different.

24. In compliance with the above order, the Chief Staff Officer (P & A), Headquarters, acting for the Flag Officer Commanding-in-Chief,

Headquarters, Eastern Naval Command, Visakhapatnam, filed affidavit dated 10.10.2012. Therein, he stated that the Family Clinic at Nausena

Baugh, Visakhapatnam, was created out of Non-Public Funds as a welfare measure for the families of the personnel serving in the Navy and the

aim of the Family Clinic was to provide primary medical cover for minor ailments in order to ease the burden on the Military Hospitals and also to

avoid wastage of time of family members of serving naval personnel in going all the way to the main hospital, i.e., INHS Kalyani. He further stated

that there was no Government sanction for setting up Family Clinics and, therefore, the entire staff, including doctors and nurses working there

were paid honorarium out of Non-Public Funds which were generated through contributions from officers and sailors. He further stated that it was

only for the purpose of general administration that the Family Clinic was placed under the Officer Incharge, Station Health Organization,

Visakhapatnam, under the guidance of the Headquarters, Eastern Naval Command. As regards the pointed queries posed by this Court in the

order dated 20.09.2012, he stated that there was no sanctioned post of Staff Nurse in the Naval Hospital, INHS Kalyani, and the Nursing Staff of

the hospital were stated to belong to the Military Nursing Service (MNS), a uniformed service, which was subject to the Army Act, 1950. Details

were furnished of the persons who were appointed as civilian Staff Nurses in the Naval Hospital at Visakhapatnam. The essential qualification for

appointment as a civilian Staff Nurse in the Naval Hospital was stated to be Matriculation or equivalent; a Certificate of Training as a Nurse from

an approved hospital; and registration as a fully Trained Nurse in Medical and Surgical Nursing and Midwifery. He also furnished details of the pay

scales applicable to Staff Nurses since 1973. As regards the appointing authority, he stated that till August, 1979, the Flag Officer Commanding-

in-Chief was the appointing authority for Staff Nurses in Naval Hospitals and thereafter, the powers were delegated to the Chief Staff Officer (P &

A), Headquarters, Eastern Naval Command. He denied that the appointing authority was the same for personnel in the Naval Hospital and the

Family Clinics.

25. The last affidavit was filed by the respondents on 06.11.2012. This affidavit was also filed by the Chief Staff Officer (P & A), Headquarters,

Eastern Naval Command, Naval Base, Visakhapatnam. This affidavit was filed in response to the order dated 18.10.2012 passed by a learned

Judge of this Court. On that day, the learned Judge took note of the fact that the learned Assistant Solicitor General for India, appearing for the

respondents, undertook to produce by the next date of hearing certain documents relating to recruitment of candidates between 1972 and 1988;

the services rendered by the petitioner at the Naval Hospital and the Family Clinic from 1973 to 2009; the dates on which pay scales were

revised; and the recruitment rules and modifications thereto.

26. In this affidavit, it was stated that most of the documents pertaining to the period in question had been destroyed and only after great effort,

majority of the documents produced along with the affidavit could be retrieved. As regards the revision of pay scales, it was stated that there were

four Central Pay Commissions announced by the Government of India since 1973 for civilian staff. The details of pay revision for Staff Nurses in

Naval Hospitals since 1973 were tabulated. Be it noted that after the revision in 2006 by the Sixth Central Pay Commission, such scale was

upgraded to Rs. 9300-34800 + GP 4600. The details of the honorarium paid to the petitioner from September, 1973 to August, 2009 were also

tabulated and read as under:

September, 1973 to February, 1993:Rs. 300.00

March, 1993 to February, 1997: :Rs. 1,250.00

March, 1997 to March, 1998 :Rs. 1,350.00

April, 1998 to March, 1999 :Rs. 1,600.00

April, 1999 to March, 2000 :Rs. 1,700.00

April, 2000 to March, 2001 :Rs. 1,800.00

May, 2001 :Rs. 1,900.00

June, 2001 to August, 2009 :Rs. 2,300.00

27. As regards the service rendered by the petitioner, it was stated that the Naval Family Clinic was adjacent to the Family Welfare Centre and at

times, due to the absence of the Lady Health Visitor at the Family Welfare Centre, services of the Staff Nurses of the Naval Family Clinic were

utilized at the Family Welfare Centre in order to avoid inconvenience to patients. This arrangement was stated to have been sanctioned under

Temporary Memorandum No. 11/89 dated 21.09.1989 issued by the Officer Incharge, Station Health Organization, Visakhapatnam. As regards

the exact particulars of such service rendered by the petitioner herself, it was stated that no details or records were available as to the specific

dates on which the petitioner worked in the Family Welfare Centre. However, it was admitted that the services of the petitioner were, in fact, so

used from time to time. Details as to eligibility criteria for appointment, as set out in the earlier affidavit, were reiterated. Referring to the case of

Saroja Sakkubai, it was stated that she was initially appointed on a consolidated pay and was granted quasi-permanency thereafter. She was said

to have been appointed against the sanctioned Government post of Lady Health Visitor in the Family Welfare Clinic about a decade before the

petitioner was appointed and it was asserted that the petitioner could not claim parity with her. The affidavit concluded by stating that the petitioner

was not the only employee of the Family Clinic and about 12 other personnel, ranging from Lady Medical Officers to Ayahs/Sweepers, were also

employed there. They were all paid honorarium from Non-Public Funds and therefore the claim of the petitioner for regularization of her services

could not be accepted. The monthly payment particulars of the staff of the Family Clinic submitted by the SHO, Visakhapatnam, were produced.

The same were certified by the Surgeon Commander, Officer Incharge, SHO (V), and the Lt. Commander, Assistant Officer Incharge, SHO (V).

28. In her reply affidavit dated 26.02.2014, the petitioner pointed out that after her initial appointment in 1973 on a consolidated honorarium, she

was extended a regular pay scale under order dated 30.08.1974 and she continued against the said scale till 1993, in which year she was sought to

be converted to a consolidated salary employee again. She pointed out that all the three hospitals--INHS Kalyani, the Family Welfare Centre and

the Family Clinic were meant for naval employees only. She stated that her case stood on a different footing as compared to the other staff in the

Family Clinic as: (1) she was appointed by the CSO (P & A), acting on behalf of the Flag Officer Commanding-in-Chief, against an advertisement

given on his behalf (2) the pass given to her was a permanent pass unlike those given to other employees of the Family Clinic and (3) she was

asked to stand in for the Lady Health Visitor of the Family Welfare Centre whenever she was absent. She further stated that she had been granted

earned leave and casual leave and that she was the only employee in the Family Clinic to enjoy the same. She pointed out that the naval authorities

exercised administrative, financial and supervisory control over her and having extracted her services for a period of 36 years, she asserted that it

was not open to them to contend that she was not a regular employee. She pointed out that she had been offered regular appointment by the State

Government in the year 1976 but had chosen to remain in the service of the Navy. She pointed out that she was never informed at any point of

time about her alleged Non-Public Fund employee status. She further stated that she was paid DA and HRA, along with uniform, washing and

messing allowances, up to the year 2001 and that it was not correct to state that she was paid only an honorarium. She therefore asserted that a

master-servant relationship existed between her and the Navy and as her services had been extracted for over three and a half decades, she

contended that the respondents were liable to extend to her difference of salary, promotions, terminal benefits and pension.

29. At the time of admission of this writ petition on 08.06.2000, this Court directed status quo to be maintained as regards the emoluments to be

paid to the petitioner.

30. At the outset, the contention of the respondents that the judgment of the Tribunal in O.A. No. 302 of 1993 constitutes res judicata and bars

examination of the issues arising in this writ petition is liable to be rejected. The Tribunal merely accepted the contention of the respondents that the

petitioner was not a Government Servant and held that it had no jurisdiction in the matter. However, liberty was given to the petitioner to approach

the appropriate forum and acting upon such liberty, the petitioner filed W.P. No. 9359 of 1996 before this Court. The order passed by this Court

in the said writ petition required the respondents to reconsider the issue as well as the plea of the petitioner for regularization of her services. This

led to the rejection of the petitioners request under proceedings dated 29.06.1998 and the appellate order dated 29.09.1999, which is under

challenge presently. The issue is therefore open for consideration in its entirety before this Court.

31. The alternative plea of the learned Assistant Solicitor General that the writ petition is liable to be dismissed as the petitioner did not approach

the Central Administrative Tribunal first, is also to be rejected. It may be noted that the petitioner originally approached the Central Administrative

Tribunal aggrieved by the order issued as long back as in 1993 altering her condition of employment. It was only upon the Tribunal holding that it

had no jurisdiction but permitting her to approach the appropriate forum that the petitioner filed W.P. No. 9359 of 1996 before this Court.

Pursuant to the directions of this Court, the petitioner again submitted a representation, consideration of which resulted in the order impugned in the

present writ petition. It cannot therefore be said that the petitioner failed to approach the Administrative Tribunal in the first instance. The mandate

laid down in L. Chandra Kumar V/s. Union of India is therefore satisfied and this writ petition is not liable to be dismissed on this technical ground.

32. Though the naval authorities strove to place the petitioner on par with other employees in the Naval Family Clinic, the petitioner claimed that

she stood on a separate footing as she was dealt with on a different basis when compared to such other employees. However, this Court is not

inclined to venture into this aspect as the same is not germane. Irrespective of whether the petitioners case was treated differently from that of the

other employees in the Naval Family Clinic at Nausena Baugh, unless the respondent authorities establish before this Court that this clinic was

dissociated from the official naval organization, there is no question of discriminating between the employees thereof and the regular employees of

the Naval Hospitals and Family Welfare Clinics, which were admittedly part of the official structure. Further, the contention that the petitioner alone

cannot seek regularization as other employees of the Family Clinic also stood on the same footing is mentioned only to be rejected. The fact that

other similarly situated employees chose to silently suffer the injustice meted out to them would not disentitle the petitioner from speaking up or

seeking relief.

33. Presently, the core issue that falls for the consideration of this Court is as to whether there exists a master servant relationship between the

naval authorities and the petitioner. In turn, the question arises as to whether payment of salary to the petitioner from a so called Non-Public Fund

would make any difference in this regard.

34. The initial appointment order of the petitioner is not made available. Neither the petitioner nor the respondents could produce a copy of the

same. However, the Notification issued vide the Temporary Memo dated 06.08.1973 is available and perusal thereof reflects that no mention was

made therein as to the source from which the salary was proposed to be paid to the fulltime lady doctor or the qualified nurse sought to be

appointed thereunder at the Family Naval Clinic, Nausena Baugh.

35. Further, there is no escaping the fact that the Flag Officer Commanding-in-Chief, Headquarters Eastern Naval Command, through the Chief

Staff Officer (P & A), issued proceedings dated 30.08.1974 informing the petitioner that upon her completion of one year service, a pay scale was

fixed for her along with DA, HRA, Uniform, Washing and Messing Allowances. She continued against a pay scale till the year 1993, when the

terms and conditions of her appointment were unilaterally altered. The pay-drawn certificate dated 20.02.1985 filed by the petitioner reflects that

she was paid Rs. 1,782.93 ps. thereunder and the break-up thereof encompasses payment towards basic pay, DA, Additional DA, Kit upkeep

allowance, Hair cutting allowance, Soap allowance, CCA allowance and Interim Relief. In effect, she was treated as a regular employee on a pay

scale for nearly 20 years. There is no explanation from the naval authorities as to why the petitioner remained on a pay scale for such a long time if

her appointment was to a temporary post on a consolidated honorarium. Their feeble explanation that it was by inadvertence that her honorarium

was termed a pay scale is liable to be rejected in the light of the pay certificates produced by the petitioner, which clearly indicate to the contrary.

Apart from this, the petitioner was subjected to the disciplinary and administrative control of the Headquarters, Eastern Naval Command. Such

control would invariably vest in the employer and unless the required relationship existed between the Eastern Naval Command and the petitioner,

the power of administrative and disciplinary control could not have been exercised by such authority over the petitioner.

36. Another crucial fact is that the petitioners services were utilized in the Family Welfare Clinic whenever the Lady Health Visitor, an official

employee of the said clinic, was absent. This is baldly stated to be a mistake committed by the authorities concerned, but the same has a telling

effect upon the defence put forth by the respondent authorities at this late stage.

37. The inescapable facts that glare from the record are that the petitioner was appointed to the post without being informed about the so called

Non-Public Fund nature thereof or that she would not be part of the organization. The actions of the naval authorities for all of 20 years spoke to

the contrary and it was only in the year 1993 that the petitioner was sought to be disowned by a unilateral modification of the terms of her

appointment. The same was subjected to challenge initially before the Tribunal and thereafter before this Court and the issue remains alive till date.

In the meanwhile, the petitioner who continued to labour for the naval authorities attained the age of superannuation and her services were

discarded nearly a year thereafter on the ground of age.

38. The first counter filed by the naval authorities before the Central Administrative Tribunal disclosed various facts which negate the stand now

sought to be adopted by them. Therein, the Chief Staff Officer (P & A) spoke on behalf of the Flag Officer Commanding-in-Chief, Headquarters,

Eastern Naval Command, and admitted that because of the inability of Naval Hospitals, Station Health Organizations and Family Welfare Clinics

sanctioned by the Government to cater to the medical needs of naval personnel and their families, the local authorities of the Navy set up Naval

Family Clinics. In effect, these clinics were established to make up for the deficiency of the sanctioned Government machinery in meeting the

obligation of catering to the medical needs of naval employees and their families. On the one hand, it was stated that these clinics were funded by

the profits generated by the naval canteens etc, but on the other, the petitioner was stated to have been paid honorarium from the Common

Amenities Fund, a Non-Public Fund.

39. Regulations for the Navy (Part I) were produced by the learned Assistant Solicitor General. Reference was made to Chapter 28 therein

dealing with Canteens and it was pointed out that under Regulation 2804, the Indian Naval Canteen Service was established under the orders of

the Chief of the Naval Staff and the funds of the Indian Naval Canteen Service were stated to be Non-Public Funds. Regulation 2811 deals with

Non-Public Funds and reads as under:

2811. Non-Public Funds. (1) No Non-pubic fund, other than officers mess and wine funds, officers welfare fund, sailors welfare fund and ships

sports fund shall be opened without the written approval of the Captain. In ships where the total number of officers borne does not exceed four,

the opening of any such fund (including officers mess and wine funds, officers welfare fund, sailors welfare fund and ships sports fund) shall be

submitted to the Administrative Authority for approval. The Captain may authorize the opening of any other fund in writing and shall report to the

Administrative Authority. In the case of non-commissioned establishments the prior approval of the Administrative Authority will be sought for

opening of non-public funds.

(2) The officer approving the opening of a fund shall issue instructions for:-

(a) The supervision of the fund.

(b) The duties of personnel responsible for the fund.

(c) Keeping the accounts.

(d) Custody of cash.

(e) Auditing accounts.

(f) Fixing prices, where sales take place, indicating who is responsible in each case.

(g) Custody of stores.

(3) The officer supervising the fund is responsible that the cash in hand and stock, if held, never exceed actual requirements.

(4) No person having the custody of cash, being or forming part of a non-public fund, is permitted to cash his own cheque or I.O.U. from the

money in his charge or otherwise to use such money for his own purpose. Cashing private cheques of individuals from non-public funds is

forbidden except when specially authorized by the Commanding officer. Commanding officers are not to authorize the cashing of private cheques

except in pressing circumstances. At no time shall money be loaned to an individual on an I.O.U. or otherwise. See also regulation 2718(1).

(5) When no special account book is otherwise, provided, account of non-public funds shall be kept in form IN 12.

40. The above Regulation does not provide for appointment of employees through utilization of such funds. The funds, which are mentioned in the

said Regulation, are Officers Mess and Wine Fund, Officers Welfare Fund and Sports Fund. These funds obviously would not require recruitment

of personnel sourced therefrom. This is patently clear from Regulation 2811(2) which details the methodology of utilization of such funds and

necessary instructions in relation thereto. It is therefore clear that the Non-Public Funds referred to in Regulation 2811 are altogether different from

the Non-Public Fund which is said to be the source of maintenance of the Family Clinic at Nausena Baugh, Visakhapatnam. This Regulation is

therefore wholly irrelevant for the purposes of this case. It is also relevant to note that under Section 184 of the Navy Act power is vested in the

Central Government to make regulations for various purposes including recruitment, conditions of service and regulation of the naval forces and

there is no distinction drawn therein between Public and Non-Public Fund naval employees.

41. Despite a specific order being passed by this Court on 18.12.2008 to produce necessary material justifying the distinction made by the naval

authorities between employees paid from out of a Public Fund as opposed to a Non-Public Fund, no material has been placed before this Court

with regard to the Common Amenities Fund, which is stated to be the source of the petitioners so-called honorarium. The details produced relating

to the Indian Naval Benevolent Associated Fund, which is also stated to be a Non-Public Fund, have no relevance. This Fund appears to have

been instituted in December, 1975 and was administered by Naval Headquarters headed by the Director, Non-Public Fund. This Fund was to

afford financial relief or assistance in deserving cases of widows, children and other dependents of deceased/missing officers and Sailors. The

advances from the INBA Fund were specified for various purposes, such as, marriages, house repairs, educational loans, etc. All the Naval

personnel were required to contribute to the INBA Fund. This fund seems to have been established for affording financial relief in deserving cases.

Appointment of personnel by utilizing the said fund is not at all envisaged. Similarly, another such Fund was the Indian Naval Amenities Fund

(INAF). This Fund was also to be maintained at the Directorate of Non-Public Funds at the Naval Headquarters. However, no details are

forthcoming as regards the disbursal of the INAF. Further, no material is placed before this Court to accept that the Indian Naval Amenities Fund

is the same as the Common Amenities Fund.

42. In any event, from the material on record, it is evident that these so-called Non-Public Funds were maintained only for meeting specific social

welfare requirements of naval personnel and there is no indication that a separate establishment can be maintained from such a fund by recruiting

employees. Significantly, the Family Clinic was supplemental to the officially sanctioned medical facilities which were part of the establishment, viz.,

the Naval Hospitals, Station Health Organizations and Family Welfare Clinics. It is also an admitted fact that the qualification prescribed for

appointment as a Nurse in these bodies and the Family Clinic was the same. Though the Family Clinic was sought to be disowned and given a

different status, the facts establish that its funds were controlled and audited by the naval authorities; its functioning was supervised by them and the

staff nurses there were treated on par with and as interchangeable with the Lady Health Visitor at the Family Welfare Clinic, an official post. There

is no getting away from these telling facts.

43. Now, a look at the case law cited by both the learned counsel. In R.R. Pillai V/s. Commanding Officer, Headquarters Southern Air Command

(U), the Supreme Court was considering the correctness of its earlier judgment in Union of India V/s. M. Aslam. The issue was as to the status of

an employee of a unit-run canteen in the Armed Forces. In ASLAM, it was held that such employees of unit-run canteens were Government

employees. The basis for this was the finding that the unit-run canteens were funded by the Canteen Store Department. However, this was an error

as no funding was actually provided by the Canteen Store Department. It was therefore held in R.R. PILLAI that the decision in ASLAM was

incorrect as it proceeded on the assumption that such canteens were part of the Canteen Store Department, which was not so. It may however be

noticed that the question as to whether a unit-run canteen could be treated as an instrument of the State was not considered as is evident from Para

13 of the judgment, where it was specifically observed that this aspect had not been considered by the Tribunal or the High Court and therefore

did not fall for consideration.

44. It is therefore evident that the only aspect considered by the Supreme Court in R.R. PILLAI was as to the source of the financial assistance

given to the unit-run canteen. No other issue, such as administrative control over such employees, was taken into account. It may be noticed that in

its plenary jurisdiction to do complete justice, the Supreme Court took note of the death of the employee in that case and directed payment of a

sum of Rs. 2,00,000/- to his legal representatives in full and final settlement of all his claims.

45. It is also relevant to note that the Supreme Court in Parimal Chandra Raha V/s. Life Insurance Corporation of India enumerated the principles

which emerge from statute and case law, in the context of a master-servant relationship, as under:

25. What emerges from the statute law and the judicial decisions is as follows:

(i) Whereas under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his

employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the

management.

(ii) Where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the

canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide

a canteen has to be distinguished from the obligation to provide facilities to run canteen. The canteen run pursuant to the latter obligation, does not

become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast upon the employer

either by an agreement or an award, etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become

a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is

a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment

and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among

others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment,

whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the number of employees

employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously

available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing,

maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the

service available etc.

46. These principles were neither diluted nor set aside by the later judgment in R.R. PILLAI.

47. In State of Karnataka V/s. M.L. Kesari, the Supreme Court considered the object behind the directions issued in State Of Karnataka V/s.

Umadevi and observed that Umadevi cast a duty upon the Government or its instrumentality to take steps to regularize the services of those

irregularly appointed employees who had served for more than 10 years without the benefit of protection of any interim orders of Courts or

Tribunals, as a onetime measure.

48. In Nihal Singh V/s. State Of Punjab, the Supreme Court considered the determining factors for identifying an employer employee relationship.

The issue before the Supreme Court was as to the status of Special Police Officers appointed by the Senior Superintendent of Police. The

regularization of the services of such Special Police Officers was negatived as there was no regular cadre of such posts. Another reason for denial

was that the Special Police Officers were paid wages by various banks where they worked as guards and it was therefore opined that their claim

for regularization, if any, would lie only against the bank concerned and not the Police Department. Having examined the record, the Supreme

Court found that the order of appointment was issued by the Senior Superintendent of Police in exercise of his statutory power under the Police

Act, 1861. The Supreme Court therefore held that the mere fact that payment of their wages was made by the banks at whose disposal the

services of the Special Officers were placed, did not render them employees of those banks. The appointments having been made by the State and

as disciplinary control over them also vested with the State, the Supreme Court held that the relationship of master and servant existed between the

State and the Special Police Officers.

49. In this regard, the Supreme Court observed as follows:

Coming to the judgment of the Division Bench of the High Court of Punjab & Haryana in LPA No. 209 of 1992 where the claims for

regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization

of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which

recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a

cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre

but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power

available under Section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of

employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other

employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

50. No doubt that the powers under Section 17 are meant for meeting the exigencies contemplated under it, as such, riot or disturbance which are

normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

51. But we do not see any justification for the State to take a defence that after permitting the utilization of the services of a large number of people

like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The

State has to create them by a conscious choice on the basis of some rational assessment of the need.

52. Considering the issue as to whether the Court can compel the State to create posts and direct absorption of the incumbents in the service on a

permanent basis, the Supreme Court considered this aspect in extenso and held that the failure on the part of the Executive Government to apply

its mind and take a decision to create posts or stop extracting work from persons for decades together would be an arbitrary action. The Supreme

Court concluded by stating that the State could not continue a practice inconsistent with its obligation to function in accordance with the

Constitution and UMADEVI could not become a license for exploitation by the State and its instrumentalities.

53. In D. Poornachandra Rao V/s. Tirumala Tirupati Devasthanams, Tirupati, this Court held that UMADEVI could not be understood or utilized

by employers to scuttle the very scheme of public employment and the guarantees enshrined in Articles 14 and 16 of the Constitution, by treating

as impermanent or temporary, a service which is essentially of a permanent and enduring nature. This Court pointed out that by adopting such a

practice, an employer having appointed temporary/ad-hoc/daily wage employees on the ground that there were no permanent posts in a particular

service, cannot take recourse to UMADEVI to say that such persons have no rights as UMADEVI did not lay down the proposition that an

employer can treat as temporary a post which ought to be permanent. This Court further pointed out that such a practice would, in fact, be an

unfair labour practice under Clause-I (10) of the Fifth Schedule to the Industrial Disputes Act, 1947 read with Section 2(ra) thereof.

54. Useful reference may also be made to Indian Overseas Bank V/s. I.O.B. Staff Canteen Workers Union. Therein, the issue was as to whether

the relationship of employer-employee existed between the bank and the workers engaged in a canteen run by a contractor engaged by the

management of the bank. The observations in para-18 of the judgment are of guidance.

55. The standards and nature of tests to be applied for finding out the existence of master and servant relationship cannot be confined to or

concretised into fixed formulae for universal application, invariably in all class or category of cases. Though some common standards can be

devised, the mere availability of any one or more or their absence in a given case cannot by itself be held to be decisive of the whole issue, since it

may depend upon each case to case and the peculiar device adopted by the employer to get his needs fulfilled without rendering him liable. That

being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. Therefore, it would be

not only impossible but also not desirable to lay down abstract principles or rules to serve as a ready reckoner for all situations and thereby

attempt to compartmentalise and peg them into any pigeonhole formulae, to be insisted upon as proof of such relationship. This would only help to

perpetuate practising unfair labour practices than rendering substantial justice to the class of persons who are invariably exploited on account of

their inability to dictate terms relating to conditions of their service. Neither all the tests nor guidelines indicated as having been followed in the

decisions noticed above should be invariably insisted upon in every case, nor the mere absence of any one of such criteria could be held to be

decisive of the matter. A cumulative consideration of a few or more of them, by themselves or in combination with any other relevant aspects, may

also serve to be a safe and effective method to ultimately decide this often agitated question. Expecting similarity or identity of facts in all such

variety or class of cases involving different type of establishments and in dealing with different employers would mean seeking for things, which are

only impossible to find.

56. In Vinod Kulshreshtha V/s. Union Of India, the Supreme Court was considering a case where the appellant was appointed by the Indian Navy

as an apprentice on 24-01-1991 and after completion of 14 years of service as a sailor he was discharged. Four years thereafter he was again re-

employed as an auditor under the Director General of Audit, Defence Services. His request for re-fixation of his pay taking into account his service

prior to his appointment as an auditor was rejected by the defence authorities. The Tribunal and the High Court having upheld such rejection, the

matter came before the Supreme Court. The plea on behalf of the Union of India before the Supreme Court was that the appellant had been

employed on contractual basis and was therefore not entitled to have the service counted. However, the Supreme Court found that the certificates

issued by the authorities clearly demonstrated that the appellant was regularly employed in the Navy and had completed 14 years of service in

active regular naval service. The Supreme Court therefore held that it could not be said that the appellant was employed purely on a contractual

basis and that he could not take the benefits of the orders of the Central Government with regard to reckoning of the service rendered by him. The

issue therefore turned upon the actual status of the employment of the appellant and not the mere form of his contractual appointment.

57. The case on hand falls squarely within the ambit of all the aforestated principles as the naval authorities were obliged to provide medical care to

naval employees and their families and the Naval Family Clinic was established to augment the available Government funded machinery, namely,

the Naval Hospitals, Station Health Organizations and Family Welfare Clinics. Further, the manner in which the petitioner was dealt with for all of

nearly twenty years clearly establishes that her employment was on par with regular employees working in the medical establishment of the Navy.

Therefore, the nature of the service made available through the Naval Family Clinic; the fact that it was available to only naval employees and their

families and the length of time for which the services of the petitioner were utilized apart from the manner in which they were utilized, by making her

stand in for the Lady Health Visitor, an official post in the Family Welfare Clinic, whenever the incumbent was absent; the nature and character of

the management; the interest taken by the Eastern Naval Command in maintaining supervisory and administrative control over the clinic, clearly

demonstrate that the aforestated principles would apply on all fours to the petitioners case. Her services were exploited most inhumanly and

arbitrarily by a State Instrumentality, and no less than a uniformed service, for all of 36 years and at the time of her unceremonious termination from

service she was being paid a paltry sum of Rs. 2,300/- per month! There can be no better example of the State abusing its powers and process to

victimize. The Navy, which boasts of offering an ocean of opportunities to its employees, can hardly justify the rank illegality of its actions in the

present case.

58. The material placed on record indicates that a regular staff-nurse was entitled to a pay scale of Rs. 9300-34600 + G.P. 4,600/- as per the

Revision of Pay Scales, 2006. As the petitioner accepted the revision of the pay-scale allowed to her till the year 1993 and her first protest

appears to have been only when an order was issued in the said year altering the terms and conditions of her employment, she would be entitled to

relief only from the said year. The respondent authorities shall accordingly allow to the petitioner the pay-scale relatable to a regular staff-nurse

from the year 1993 onwards, duly taking into account the revision of pay-scales from time to time, up to the date of her termination from service.

The amount already paid to the petitioner shall be deducted from the aggregate so arrived at and the balance shall be remitted to her.

59. As the petitioner was removed from service during the pendency of this Writ Petition, there can be no direction to regularize her services with

retrospective effect. She would therefore not be entitled to the relief''s of pension and gratuity which would be payable to a regular employee.

However, keeping in mind the gross abuse of power by the respondent authorities and in the face of the grave injustice done to the petitioner

despite her long service of 36 years, this Court directs the respondent authorities to pay lump sum damages to the petitioner of Rs. 10 lakh. This

amount would suffice to alleviate the denial of retirement and pensionary benefits to the petitioner despite her long length of service.

60. The writ petition is allowed to the extent indicated above. Pending miscellaneous petitions, if any, shall also stand closed in the light of this final

order. No order as to costs.