

No.12016/3/DPAR/2023/GC/U.III  
GOVERNMENT OF PUDUCHERRY  
DEPARTMENT OF PERSONNEL AND ADMINISTRATIVE REFORMS  
(PERSONNEL WING)

\*\*\*\*\*

Puducherry, dated 01.06.2023.

**I.D NOTE/OFFICE MEMORANDUM**

Sub: : Regularization of the services of the Medical Officers (Ayurveda / Siddha/ Homeopathy) appointed on contractual basis in the Directorate of Indian System of Medicine & Homeopathy, Puducherry- Observation of the UPSC- Communicated.

Ref : 1. Letter F.No. 11/6(1)/2016-AP-4 dt, 04.05.2023 of Union Public Service Commission, New Delhi.

2. Letter F. No. 11/6(1)/2016-AP-4 dt, 07.03.2018 of Union Public Service Commission, New Delhi.

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A proposal for regularization of the services of Medical Officers (Siddha/Ayurveda/Homeopathy) who were appointed on contract basis was submitted to UPSC. The UPSC has not agreed to the proposal and made various observations citing the Supreme Court Orders in Umadevi case. As the observations are relevant to all the Departments / Societies / Public Sector Undertakings of this Administration, the copy of the same is communicated herewith for guidance and compliance by all Cadre Controlling Authorities, without fail.

// By Order//

Encl: As stated.



(V. JAISANKAR)

UNDER SECRETARY TO GOVERNMENT

To

1. All the Secretariat Departments / Cadre Controlling Authorities.
2. All Public Sector Undertakings/Societies/Autonomous Bodies.

Copy submitted to:

1. The Commissioner-cum-Secretary to Govt.(Finance) / All Secretaries / Special Secretary to Govt., Puducherry
2. The Secretary to Lieutenant Governor, Puducherry.
3. The OSD to Chief Minister / Home Ministers / PWD Minister, Puducherry.
4. The Private Secretary to all Ministers / Speaker / Sr. P.A. to Deputy Speaker, Puducherry.
5. The Collector, Karaikal; The Regional Administrator, Mahe / Yanam.
6. The Private Secretary to Chief Secretary, Puducherry.
7. Spare copy.



OFFICE OF THE CHIEF SECRETARY  
PUDUCHERRY  
No. 1855/23  
Received on 2/05/23  
Despatched on

F.No.11/6(1)/2016-AP-4  
UNION PUBLIC SERVICE COMMISSION  
DHOLPUR HOUSE, SHAHJAHAN ROAD  
NEW DELHI - 1100 69

Dated the 4<sup>th</sup> .05.2023

To

The Chief Secretary,  
Government of Puducherry,  
Chief Secretariat,  
Goubert Avenue, Puducherry - 605 001.

[Attention: Shri P. Ejoumale, Under Secretary (Health)]

0211  
Sub: Regularization of the services of the Medical Officers (Ayurveda/Siddha/Homeopathy) appointed on contract basis in the Directorate of Indian System of Medicine & Homeopathy, Puducherry.

ef (Health)  
Sir,

I am directed to refer to your letter No.227/H6/Health/2015-16/2022 (Part) dated 04.11.2022 on the subject cited above wherein it has been stated that reply of UPSC, on the communication dated 28.12.2016 of Puducherry Secretariat, is still awaited.

2. In this regard, it is informed that a reply to the letter dated 28.12.2016 has already been furnished to the Puducherry Administration vide this office letter dated 07<sup>th</sup> March, 2018. A copy of the letter is enclosed for reference.

3. In so far as regularisation of Contractual General Duty Medical Officers (Homeopathy) of UT Administration, New Delhi is concerned, the regularisation of MOs has been done keeping in view the provisions of RRs as amended, and after following the due process of assessing their suitability by the Commission.

Yours faithfully,

04/05/2023

(Ashok Kumar Singh)  
Under Secretary  
Tel: 23070363

Enclosure:- (1)

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G. Karunagaran 01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY.





F.No.11/6(1)/2016-AP-4  
UNION PUBLIC SERVICE COMMISSION  
DHOLPUR HOUSE, SHAHJAHAN ROAD  
NEW DELHI - 1100 69

Dated the 7<sup>th</sup> March, 2018

To

The Chief Secretary Secretary,  
Government of Puducherry,  
Chief Secretariat,  
Goubert Avenue,  
Puducherry - 605 001.

[Attention: Shri V. Jeeva, Under Secretary (Health)]

Sub: Regularization of the services of the Medical Officers  
(Ayurveda/Siddha/Homeopathy) appointed on contract  
basis in the Directorate of Indian System of Medicine &  
Homeopathy, Puducherry.

Sir,

I am directed to refer to your letter No.227/H6/Health/2015-16  
dated 28.12.2016 on the subject cited above and to say that submission  
of the Govt. of Puducherry has been examined and it has been observed  
that:-

1. The contention, as raised by the Government of Puducherry  
regarding process of selection of contractual Medical Officers  
through open advertisement by constituting a Selection  
Committee, is not tenable because the post of Medical Officers  
(Ayurveda/ Siddha /Homeopathy) are required to be filled  
through direct recruitment in consultation with the Commission,  
as prescribed in the statutory recruitment rules for the posts.  
The proposal to this effect has not yet been received in the

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G. Karunagaran 01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY.

Issued through email  
on 01/06/23  
@ 11/13

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Commission in accordance with the statutory recruitment rules for proceeding further in the matter. Earlier, a similar proposal was received in 2004 for filling up of 13 posts, of Ayurveda Physician, 6 posts of Siddha Physician and 3 posts Assistant Surgeon, Homeopathy which was withdrawn by them during the year 2005 due to administrative reasons. Hence, the selection of Medical Officers is illegal ab-initio.

2. As regards application of reservation policy in respect of filling up of the post of Medical Officers (Ayurveda /Siddha /Homeopathy), the same should have been made applicable at the time of filling up of the said posts and not after a considerable period of time as a consequence of an afterthought so as to regularise the irregularities committed in recruitment of Medical Officers. Hence, there is a clear infringement of reservation policy as provided under Article 16 of the Constitution of India. The plea to make up the non adherence to the reservation policy by filling up the SC/ST posts from the remaining 12 unfilled vacancies of Medical Officers is not justifiable.
3. The proposition, as laid down by the Government of Puducherry under para- 3 regarding applicability of Uma Devi's case, it is emphasized that the issue of regularization stands settled and confirmed by the Constitution Bench of Hon'ble Supreme Court in the case titled Secretary, State of Karnataka Vs. Uma Devi and others reported as 2006 (4)SCC 1. Hon'ble Supreme Court has categorically held that Articles 14, 16 and 308 and 323 of the Constitution of India are required to be followed strictly as a part of basic structure of Constitution. It has clarified the distinction between regularization and conferment of permanence in service jurisprudence and held that the word regular or regularization do not connote permanence and cannot be construed so as to convey an idea of nature of tenure of appointment. These terms are calculated to condone any procedural irregularities and meant to procure such defect as are attributable to methodology followed in making appointments. It is further held that the rules framed under Article 309 of the Constitution of India are to be enforced strictly and no regularization is permissible in the exercise of Executive powers of Govt. under Article 162 of the

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*G. Karunakaran*  
01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY.



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Constitution in contravention of the Rules. In para 17, the court held as under:-

*"17 We have already indicated that constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non fundamental element of that process of procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent."*

In view of the above, the Hon'ble Supreme Court in the matter of State of Karnataka & Ors. Vs. M.L. Kesari & Ors. - CP-SLP(C) No.15774/2006, considering the grounds under para 53 of Uma Devi's case, held that appointments made without following the due process or the Rules relating to appointment did not confer any right on the appointee and the Court cannot direct their absorption, regularization or re-engagement nor make their service permanent unless the recruitment had been done in a regular manner as per relevant rules.

While taking the above view, the Hon'ble Court also made one exception to the above position (para 53 Uma Devi's case) which cast a duty upon the concerned Government or instrumentality to take step to regularize the services of those irregularly appointed employees who had served for more than ten years or more without the benefit for protection of any interim orders of Court or Tribunals, as a one time measure which must be set in motion within six months from the date of judgement. This one time exercise should consider all daily wage / ad-hoc / those employees who had put in ten years of continuous service as on 10.04.2006 without availing the protection of any interim orders of Court or Tribunals.

In the case of contractual appointments of Medical Officers (Ayurveda / Siddha/ Homeopathic) in ISM&H, Government of

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G. Karunagar  
01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY,



Puducherry, it has been observed that out of 20 Medical Officers, 2 Officers were appointed in 2001/02, 12 Officers in 2005 and 6 Officers in 2010 on contract basis. Hence, no contractual Medical Officer fulfills the requirement of ten years continuous service as on 10.4.2006 and, thus, cannot be regularized.

4. Referring to another Constitutional Bench judgement in Indra Sahani's case, in para 41 of Uma Devi (supra), the Apex Court has held that these binding decisions are clear imperatives that adherence to Article 14 & 16 of the Constitution is must in the public employment. In para 43 of Uma Devi judgement, the Apex Court held as under:-

*"Thus, it is clear that adherence to the rule of equality in Public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, the court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirement of Article 14 read with Article 16 of the Constitution. Therefore, in consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointment. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right."*

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G. Karunakaran

01/06/23  
**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY,



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5. The Supreme Court in subsequent decision in case titled as Post Master General, Kolkata and Ors Vs. Titu Das reported as 2007 (5) SCC 317 in para 13 and 15 has held as under:-

*13. Equality clause contained in Article 14 and 16 of the Constitution of India must be given primacy. No policy decision can be taken in terms of Article 77 or Article 162 of the constitutional or statutory schemes.*

*15. Before considering the submission of Mr. Roy based upon para 53 of Uma Devi (3) we may notice that in A. Umarani V. Registrar Coop. Societies, this Court held SSC p.126, para 45).*

*45. No regularization is thus, permissible in exercise of the statutory (sic executive) power conferred under Article '162 of the Constitution, if the appointments have been made in contravention of the statutory rules.*

6. Further, UPSC vide their letter dated 28.12.2012 conveyed the approval to regularize the services of 54 Lecturers in various Government colleges of Puducherry in pursuance of Order of Hon'ble CAT, Madras Bench which cannot be quoted as precedent in similar cases as has been decided by the Hon'ble High Court of Madras in various Writ Petitions as mentioned clearly vide Commission's letter of even number dated 15<sup>th</sup> December, 2016.
7. While deciding the cases of Mr. D. Brighty (WP.No.22259/12 and Mrs. C. Calarany (WP No. 9735/12) for regularization of their services from the date of initial engagement as Assistant Professors, the Hon'ble High of Madras analyzed that while directing the regularization of Petitioners, the Tribunal followed the orders passed in the matter of Shri R. Srinivasan and Ms. L. Malini. The Hon'ble High Court further held that the orders in Shri R. Srinivasan's case were obtained by plain fraud by Shri R. Srinivasan. The Hon'ble High Court has decided that the directions given in the said case and similar other matters for one time regularization, would not operate as a binding precedent.

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G. Karunakaran  
01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY.

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8. The Hon'ble Madras High Court in the case of Shri P. Ravindran Vs. Union Territory of Pondicherry has also held that the process of recruitment through the Commission as envisaged under the Constitution, cannot be bypassed by issuing directions for regularization of the services of ad-hoc persons who came to the Service through back door entry. The stand of the Commission has further been fortified by the recent judgement dated 03.01.2017 of Hon'ble Madras High Court wherein the Hon'ble High Court dismissed the WP filed by R. Angayarkani and M.S. Sharmila for their appointment as Lecturers in Law on contract basis in Dr. Ambedkar Government law College, Pondicherry.

In view of the above, it has been observed that Govt. of Puducherry has not brought out any new point and the submissions made vide their letter under reference, is a repetition of earlier stand of the Puducherry Admn. and thus a feeble attempt which cannot be accepted by the Commission. As such, it is reiterated that the proposal for regularization of the services of 19 Medical Officers appointed on contract basis in the Directorate of Indian System of Medicine & Homeopathy, Puducherry is not acceptable. The Govt. of Puducherry is again advised to send requisition to the Commission for filling up the posts of Medical Officers (Ayurveda/Siddha/Homeopathy) by way of direct recruitment in accordance with the provisions as contained in the relevant Recruitment Rules.

Yours faithfully,



(Madan Lal Soni)  
Deputy Secretary  
TEL : 23381098  
Fax: 23381715

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G. Karunakaran  
01/06/23

**G. KARUNAGARAN**  
SUPERINTENDENT, DP & AR (GC)  
CHIEF SECRETARIAT,  
PUDUCHERRY.