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Writ Petition No.8149 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.01.2025

PRONOUNCED ON : 30.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**Writ Petition No.8149 of 2024 &
W.M.P.Nos.9097 and 28663 of 2024**

1. The Director
Jawaharlal Institute of Postgraduate,
Medical Education and Research (JIPMER),
Dhanvantri Nagar,
Puducherry-605 006.

2. The Officer Incharge,
Transport Section, JIPMER,
Dhanvantri Nagar,
Puducherry-605 006.

3. Faculty Incharge,
Transport Section, JIPMER,
Dhanvantri Nagar,
Puducherry-605 006.

...Petitioners

VS.

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-104.



Writ Petition No.8149 of 2024

2. S.Mohandoss
3. A.Saravanan
4. R.Balamurugan
5. S.M.Kannan
6. N.Aroul
7. N.K.M.Pandian
8. V.THirumurugan
9. V.Prasanna

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent in O.A.No.662 of 2022 dated 10.01.2024 in allowing the O.A. Filed by the 2nd to 9th respondents and quash the same.

For Petitioner : Ms.Sunitakumari

For Respondents : Mr.M.Gnanasekar for R2 to R9
R1 – Tribunal

ORDER

M.JOTHIRAMAN, J.

Challenging the order, dated 10.01.2024 in O.A.No.662 of 2022 passed by the Central Administrative Tribunal/1st respondent herein, the petitioners, viz., the Director, Jawaharlal Institute of Postgraduate Medical Education and Research and others, hereinafter referred to 'JIPMER' have come forward with the present Writ Petition.

2. The respondents 2 to 9 herein were appointed as Drivers purely on



Writ Petition No.8149 of 2024

contract basis under under Tamil Nadu Chief Minister's Comprehensive Health Insurance Scheme (TNCMCHIS) in the Transport Section, JIPMER, Puducherry. The respondents were subjected to Written Examination held on 18.06.2018 with a skill test held on 23.06.2018 for selection as Drivers. The order of appointment on contractual basis was issued initially for the respondents 2 to 9 for a period of 40 days only. However, it has been continuing for the past four years, as such, according to the respondents 2 to 9, the contract basis was not terminated after 40 days. The JIPMER administration was resorting to fill up the posts of Driver by out-sourcing method and being aggrieved, the respondents 2 to 9 have filed the Original Application No.662 of 2022 before the Central Administrative Tribunal, Chennai Bench, seeking a direction either to absorb them to the post of available or by permitting them to continue in the same post without replacing them with new out-sourcing personnel.

3. The Tribunal, on consideration of the claim of the respondents 2 to 9, has categorically held that the JIPMER was not justified in discontinuing the engagement of the respondents 2 to 9 as Drivers on contract basis and their action in replacing them by another set of contractual employees



Writ Petition No.8149 of 2024

through out-sourcing is not tenable in the eyes of law and accordingly, allowed the Original Application. Aggrieved over the order of the Tribunal, the petitioners/JIPMER has filed the present Writ Petition.

4. Ms.Sunitakumari, learned counsel appearing for the petitioners/JIPMER would submit that the respondents 2 to 9 were engaged only on contractual basis and they cannot be construed as 'employees of the JIPMER. The nature of the appointment was purely contractual which depends upon the requirement from time to time and the respondents 2 to 9 and they had no right to be engaged on contract basis irrespective of the circumstances. She would also submit that there was no replacement of the contract drivers with another set of contract Drivers, instead, the respondents 2 to 9 had abandoned the service and neither reported to the institute nor joined the outsourcing agency to continue the service in the institute under the scheme. She pointed out that as per the Memorandum dated 17.09.2007 issued by the Government of India to all the Ministries for rationalization of expenditure in the Government Departments, wherein, it had been clearly instructed in para 2.3 that there shall not be any fresh appointment in respect of Drivers. The respondents 2 to 9 worked for only



Writ Petition No.8149 of 2024

eight hours in a given day and not round the clock as claimed by them and they raised this issue now as an afterthought. She would further submit that the findings of the Tribunal that the petitioners/JIPMER had discontinued the engagement of the Drivers and replaced them with another set of contract employees is factually not correct. The Tribunal's reliance on the word 'replace' is misplaced as the respondents 2 to 9 were not replaced by personnel under the same contractual conditions. Therefore, with these submissions, the learned counsel for the petitioner would urge this Court to quash the order passed by the Tribunal.

5. Per contra, Mr.Gnanasekar, learned counsel appearing for the respondents 2 to 9 would submit that the respondents 2 to 9 are the contractual Drivers, appointed for full time work of driving of Ambulance, Vans, Cars and any other 4 wheelers at JIPMER and they had worked for about four years without any break in service since they were allowed to work regularly and as such, the contract basis was not terminated after 40 days, much less, they are continuing to work till date by showing a break of one day for every month and permitting them to continue for record purpose. He would submit that JIPMER is empanelled under the scheme



Writ Petition No.8149 of 2024

called TNCMCHIS, the contractual appointment of the respondents 2 to 9 will remain valid upto the contractual period for engagement, as approved on each occasion or till the functioning of the scheme in the Institute and as such, the contractual appointment cannot be replaced by another contractual /outsourcing engagement. Therefore, considering all these aspects in a perspective manner, the Tribunal has rightly considered the claim of the respondents 2 and 9, which requires no interference. Hence, he sought for dismissal of the Writ Petition.

6. In support of his contentions, the learned counsel for the respondents 2 to 9 would rely upon a decision of the Delhi High Court rendered in “**Narinder Singh Ahuja and others versus the Secretary, Ministry of Health and others**” (W.P.(C) No.1741 of 2014, dated 03.11.2014 and also upon the order of the Central Administrative Tribunal (Principal Bench), New Delhi in O.A.No.2112 of 2020, dated 05.03.2021.

7. We have considered the submissions made by the learned counsel for the parties and perused the entire materials placed on record.



Writ Petition No.8149 of 2024

8. Admittedly, the respondents 2 to 9 have been appointed on contractual basis under TNCMCHIS at Transport Section, JIPMER, Puducherry, vide Official Memorandum, dated 20.7.2018. The said Official Memorandum is extracted as under:

No. TS./Rectt./Contract/2017

Date: 20 JUL 2018

OFFICE MEMORANDUM

Sub: Appointment of following Officials as Driver purely on Contractual Basic under TNCMCHIS at Transport Section, JIPMER, Puducherry - Orders issued.

Ref: This Office Order No. TS./Rectt./Contract/2017 Dt. 28.06.2018.

By the approval of the Competent Authority the following officials are appointee to the post of Driver purely on Contract basis under TamilNadu Chief Minister Comprehensive Health Insurance Scheme (TNCMCHIS) at Transport Section, JIPMER, Puducherry with effect from the da mentioned against each on the following terms and conditions:

<i>S.No.</i>	<i>Name of the Driver</i>	<i>Date of Joining</i>
1.	Mr. S. MOHANDOSS	04.07.2018
2.	Mr. N.K.M.PANDIAN	04.07.2018
3.	Mr. M. KANNAN	09.07.2018
4.	Mr. N. AROUL	10.07.2018
5.	Mr. A. SARAVANAN	02.07.2018
6.	Mr. R. BALAMURUGAN	02.07.2018
7.	Mr. V. THIRUMURUGAN	02.07.2018
8.	Mr. V. PRASSANNA	05.07.2018

1. The Official concerned will be paid a contractual amount of Rs.18,000/- (Rupees Eighteen Thousand only) per month. They



WEB COPY



Writ Petition No.8149 of 2024

will be posted to work in JIPMER, Puducherry, Karaikal and anywhere in JIPMER outreach Centers and should be prepared to work in shifts including night shifts and also during holidays in case of emergency.

2. The order is issued so as to enable them to get their salary pertaining to the period mentioned is debitable under TNCMCHIS Insurance Fund issuing ECS in their name.

3. The appointment is purely on contract basis only for a period of 40 days from the date of joining. The appointee can be terminated at any time without assigning any reason. The appointee shall perform the duties assigned to them by their higher authority.

4. The appointee shall not be entitled to any benefit like Provident Fund/ Pension/ Gratuity/National Pension Scheme (NPS) and other allowances etc., or any other benefits available to the employees appointed on regular basis.

5. The appointee shall be permitted to avail two and half-a-days leave per month during their period of contract engagement. If leave will be taken for 15 days continuously without getting proper permission and prior approval from the competent authority the appointment will be terminated immediately.

6. They will not have any rights for any regular appointment to any post in this Institute.

7. Other terms and conditions will be governed by the relevant rules and other orders that are in Force from time to time.

**MEDICAL SUPERINTENDENT
JIPMER, Puducherry-6.**

9. Therefore, as could be seen from the above Official Memorandum, it has been mentioned that the appointment is purely on contract basis only



Writ Petition No.8149 of 2024

for a period of 40 days from the date of joining. The appointee can be terminated at any time without assigning any reason. It is also mentioned that they will not have any rights for any regular appointment to any post in the institution.

10. The Ministry of Finance, Department of Expenditure, New Delhi, in its Office Memorandum No.7(2) E.Coord/2007, dated 17.09.2007 issued to all the Secretaries to the Government of India, for rationalization of expenditure in Government Departments, wherein, para 2.3 refers to 'Vehicles', which reads as under:

“2.3 Vehicles

No new vehicles shall be purchased even for the replacement of condemned vehicles. The requirement of vehicles shall be met through hiring on a short/medium term basis, except in the Armed Forces etc. and Internal Security apparatus where the scope for hiring of vehicles is limited. There shall not be any fresh appointment of drivers. Excess drivers in any Ministry/Department shall either be sent to the Surplus Cell or else utilized by hiring



of vehicles without drivers. Purchase of new vehicles shall only be permitted in respect of new organizations on a case-to-case basis.

11. It is seen from the records that eight Drivers were engaged under the TNCMCHIS Scheme during the period from 02.07.2018 to 10.07.2018 on periodic contract basis for JIPMER Puducherry and in addition, 4 drivers were engaged for JIPMER Karail campus and one for JIPMER Rural Health Centre purely on contract basis only for a period of 40 days from the date of joining. Therefore, since the nature of the appointment was purely on contractual basis which depends upon the requirements from time to time and the respondents 2 to 9 had no right to continue to be engaged on contract irrespective of the circumstances. The Tribunal failed to consider the Office Memorandum No.7(2) E Coord/2007, dated 17.09.2007 issued to all the Ministries for rationalization of expenditure in the Government Departments, wherein, it has been clearly instructed in para 2.3 that there shall not be any fresh appointment in respect of Drivers. Therefore, it was a policy decision of the Government of India that fresh drivers should not be engaged and as such no new regular posts of drivers were sanctioned and in such circumstances, the petitioners were constrained to out-source the



Writ Petition No.8149 of 2024

services of the Drivers to put an end for issuing separate appointment of contract drivers for short periods from time to time. The contract drivers under the scheme were receiving a consolidated amount of Rs.18000/- per month whereas, outsourcing agency is providing a higher salary along with benefits, such as provident fund contribution, bonus, medical treatment, etc., which is much advantageous for them and there is no arbitrariness at all. However, the Tribunal has misconstrued the scope of the judgment of the Hon'ble Apex Court that the replacement of contract employee by fresher, junior or even a staff from an out-sourcing agency is prohibited. Therefore, the contention of the respondents 2 to 9 that since they have been provided service continuously for a period more than four years, they may be protected either by absorbing them in regular posts or permitting them to continue in the present posts on contract basis without replacing them with new outsourcing Drivers, is not at all acceptable one since contract employees cannot be replaced by another set of contract employees. There is no legal basis and the respondents 2 to 9 have no right to claim reappointment on contract basis. The Tribunal failed to consider the fact that neither the respondents 2 to 9 made any representation seeking to extend their contract nor challenged the decision of outsourcing the post of



Writ Petition No.8149 of 2024

drivers to a contractor through GeM Portal. The Tribunal also failed to consider the Office Memorandum, dated No.7(2) E.Coord/2007, dated 17.9.2007 issued to all the Ministries of the Government of India for rationalization of expenditure in the Government Departments. The findings of the Tribunal that the petitioners have discontinued the engagement of the Drivers and replaced them with another set of contract employees is factually not correct.

12. In the light of the above discussion, we are inclined to interfere with the order, dated 10.01.2024 in O.A.No.662 of 2022 passed by the Central Administrative Tribunal.

13. Accordingly, the Writ Petition is allowed and the order, dated 10.01.2024 in O.A.No.662 of 2022 passed by the Central Administrative Tribunal is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.



Writ Petition No.8149 of 2024

(S.M.S., J.) (M.J.R., J.)

30.01.2025

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Writ Petition No.8149 of 2024

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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Pre-delivery Order in
W.P.No.8149 of 2024

30.01.2025