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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2025

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 9798 of 2025

Ayya Nadar Janaki Ammal College (Autonomous)
Rep. by its Secretary
Mr.G.Abiruben
S/o. Mr.A.Grahadurai
Ayya Nadar Janaki Ammal College (Autonomous)
Sivakasi, Virughunagar District – 626 124.

... Petitioner

..Vs..

1. The Government of Tamil Nadu
Represented by the Principal Secretary
Higher Education Department
Fort St. George
Chennai – 600 009.
2. The Director of Collegiate Education
I.A.S.E. Campus
577, Anna Salai, Saidapet
Chennai – 600 015.
3. The Regional Joint Director Collegiate Education
Madurai Region
Madurai.

... Respondents



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PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus directing the second and third respondents to permit the petitioner college to fill up the sanctioned posts of Group D non-teaching staffs viz., Waterman -2, Gardener-2, Sweeper-5, Scavenger-2, Watchman-2 and Groundsman/Marker-4 in the sanctioned vacancies in the light of the order of this Hon'ble Court made in W.P.(MD).No. 1234 of 2014 dated 24.02.2015 in W.A.(MD).No. 931 of 2018 dated 12.07.2018 which has been confirmed the Hon'ble Apex Court in SLP.No. 323 of 2019 dated 18.01.2019 and to approve the said appointments.

For Petitioner :: Ms. Selvi George
for Mr. E.Martin Jaya Kumar

For Respondents :: Mr. C. Jayaprakash
Government Advocate

ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction against the second and third respondent to permit the petitioner to fill up the sanctioned posts of Group-D non-teaching staff like Waterman -2, Gardener-2, Sweeper-5, Scavenger-2, Watchman-2 and



Groundsman/Marker-4 in the sanctioned vacancies. The petitioner placed reliance on the order of this Court in W.P.(MD).No. 1234 of 2014 dated 24.02.2015 and in W.A.(MD).No. 931 of 2018 dated 12.07.2018 which had been confirmed by the Hon'ble Supreme Court in SLP.No. 323 of 2019 dated 18.01.2019. The petitioner seeks approval of the said appointments.

2. In the affidavit filed in support of the Writ Petition, it had been contended that the petitioner is a college for Arts and Science at Sivakasi and is an aided Institution. It had been contended that the petitioner had been sanctioned with non teaching staff under Grade-D under the aided scheme. Consequent to the proceedings of the respondents in Na.Ka.No. 42834/S2/72 dated 11.10.1973, Na.Ka.No.2357/F1/87 dated 28.10.1987 and G.O.Ms.No. 661 dated 16.05.1990, the petitioner had filled up the posts of Waterman -2, Gardener-2, Sweeper-5, Scavenger-2, Watchman-2 and Groundsman/Marker-4 in the sanctioned vacancies, and had thereafter, sought approval of the same. But however, only 50% of the posts had been granted approval. It is under those circumstances that the present Writ Petition has been filed.



3. The learned counsel for the petitioner placed reliance on the order of this Court in ***W.P.No. 6306 of 2025 [Dharmapuram Adhinam Arts College Vs. The Government of Tamil Nadu and others]*** wherein by an order dated 24.02.2025 in paragraph No.25, this Court in similar circumstances had held as follows:-

“2. Even though the petitioner institution has a right to fill up such posts, on the side of the respondents it is contended that a policy decision has been taken by the Government to fill up even sanctioned post in aided Educational Institution through outsourcing. It is contended that a uniform policy is to be adopted for filling up these posts and if the Management is given a free hand, there would always be a possibility of overlooking existing norms for appointments and appointing individuals at the whims and fancies of the Management of the Educational Institutions.

3. However, the learned counsel for the petitioner had placed reliance on the judgment of the Division Bench of this Court dated 19.07.2019 in W.A.Nos.2096 and 2124 of 2019 which appeals were preferred by the State against the order of a learned Single Judge of this Court. Even in those writ appeals the issue was whether



the Educational Institution could fill up Group-D Non Teaching Staffs through their recruitment process and whether the Government have to impose a condition to fill them up only through outsourcing. The Division Bench categorically held that such sanctioned post could be filled up by the Management and that the Government cannot direct that such post should be filled up only through outsourcing. Relevant paragraphs of the judgment is extracted as below:-

7. There is no dispute that the Management was entitled to make appointments taking into account four vacancies in the post of Non-teaching staff. The denial of approval was only on account of the order in G.O.Ms.No.219 dated 24.10.2013. There is no question of issuing a Government Order for outsourcing, even in respect of the sanctioned post. When it is made out that the post is sanctioned, the Management is having every right to fill up the post. The Government has no right to say that the post should be filled up only by outsourcing.

8. The posts were sanctioned only in accordance with the Tamil Nadu Private Schools Regulation Act, 1976 and the Rules made thereunder. The staff strength fixed as per the Rules cannot be taken away by issuing a Government Order directing or permitting outsourcing. We are therefore of the view that the learned Single Judge was justified in allowing the writ petition.



4. It is also further contended that the respondents have taken up filling up of such posts through outsourcing and had issued instructions in this regard by letter communication dated 05.06.2023. That particular communication was put to test in W.P.No.29647 of 2023 in the case of **Ramasamy Tamil College, Karaikudi Vs The Government of Tamil Nadu, rep. By its Secretary, Higher Education Department, Fort St.George, Chennai and others**. A learned single Judge of this Court by order dated 21.12.2023 had quashed the said letter. In this connection, the relevant portion of the order of the learned Single Judge is extracted as below:-

“8. In this background, the reason assigned in the impugned order, as well as the submission made by the learned Additional Government Pleader justifying their action on the basis of G.O.Ms.No.49, as well as the clarification given by the Principal Secretary, Higher Education Department dated 08.09.2022 cannot be legally sustainable. Consequently, the action of the respondents in rejecting the petitioner's claim seeking for approval of the appointments of the four sanctioned posts cannot be sustained”.



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It is contended that a Writ Appeal filed by the Government had also been dismissed.

5. In view of the categorical pronouncements and the dictum laid, the writ petition is allowed and it is held that the petitioner has every right to fill up the said three posts of Non Teaching Staff Group D namely one Sweeper, one Scavenger and one Gardener in accordance with procedure as followed by the petitioner's institution. It is to be noted that these are sanctioned posts. No costs. ”

4. The reasons given above directly applies to the petitioner herein.

It is held that the petitioner has every right to fill up the said posts of Waterman -2, Gardener-2, Sweeper-5, Scavenger-2, Watchman-2 and Groundsman/Marker-4 for non teaching staff Grade-D in accordance with the procedure as followed by the petitioner college, which are sanctioned posts.



WEB COPY 5. The Writ Petition stands allowed. No order as to costs.

09.04.2025

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Index: Yes/No

Internet: Yes/No

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C.V.KARTHIKEYAN, J.,

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