

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1221 of 2022

1. The Navodaya Vidyalaya Samiti (NVS) through the Commissioner, Navodaya Vidyalaya Samiti, Department of School Education and Literacy, Ministry of Education, Government of India, B-15, Institutional Area, Sector-62, Noida, District- Gautam Budh Nagar- 201309 (UP).
2. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Department of School Education and Literacy, Ministry of Education, Government of India, Regional Office, Karpuri Thakur Sadan, Kendriya Karyalay Parisar, Block-A and B, 5th Floor, Ashiyana Digha Road, Patna- 800025 (Bihar).
3. The Principal, Jawahar Navodaya Vidyalaya, Samastipur, P.O.- R.O. Birauli, District- Samastipur- 848113 (Bihar).

... .. Petitioner/s

Versus

Nitin Roy Son of Sri Lalan Singh Junior Secretariate Assistant (JSA), Jawahar Navodaya Vidyalaya, Samastipur, Resident of Quarter No.13, Post- R.I. Birauli, District- Samastipur- 848113 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad Advocate
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit) Advocate
		Mr. S.K. Dixit Advocate
		Mr. S.K. Chaubey Advocate
		Mrs. Swastika Advocate
For State	:	Mr. Apurva Kumar Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-01-2023

Service of notice to respondent is completed. Matter is taken up for final disposal.

Pursuant to previous orders, the State Government has filed their counter affidavit.

Para 9 and 11 of the counter affidavit read as under:-

“9. That in matters of



panchayat/Niyojit teachers, the role of the State government is confined to the extent of providing grant in aid to the Panchayati Raj Institutions/local bodies for payment of salary to such teachers and provides infrastructural support to such institutions.

11. That thus it is submitted that panchayat teachers/niyojit teachers do not come under the state government.”

Core issue involved in the present *lis* is whether respondent's spouse who is staff of the Zila Parishad could be treated as staff of the State government or not?

Para 5 of the notice-Transfer Guidelines 2018 dated 02.04.2018 reads as under:-

“5. Transfer on priority (spouse ground): NVS, through provisions of its transfer policy and guidelines extends due priority in transfer for unification of spouse. However, in order to facilitate unification of NVS spouse for promoting better living and working atmosphere within organisation, the transfer on grounds of spouse unification may be governed in following order of priority:

(i) NVS Spouse (to be given top priority for seeking transfer where both the employees are NVS employee). It will also cover the case of those spouse whose wife/husband has died while in service.

(ii) Central Govt. Spouse (to be given priority after NVS Spouse where one employee is in NVS while the other is in Central Govt).

(iii) State Govt. Spouse (to be given priority after NVS and Central Govt. spouse where one employee is in NVS while the other is in State Govt). **(underline supplied)**



(iv) All spouses having served a full tenure (10 years/ 05 years as applicable to their cadre or 10 year if one member is of 10 year tenure and other member is of 05 year tenure) under unified status may be treated as deemed vacant and are liable to be displaced in order to maximise opportunity for other employees to serve there. However, due care may be taken to keep the spouse unified, if displaced, in any other JNV subject to availability of vacancy. In case of displacement of State / Central Govt Spouse, care will be taken to post the displaced employee within state boundary subject to availability of vacancy.

(v) Employee posted on a station outside the State boundary (of spouse) may not be protected from displacement claiming spouse ground.

(vi) Employee opting transfer, on spouse ground, to JNV outside state boundary will not be allowed transfer on spouse ground. However, they can claim such station as a normal transfer (plain area) without availing any priority.

(vii) Certificate of spouse:
Certificate of working spouse must be issued by the competent authority within one month prior to the date of filing of online application form. The certificate must clearly mention whether the organisation is purely a Central / State Govt. / Autonomous / Private Organisation and whether the employee concerned is a permanent / contractual employee.

(viii) The Principal shall act as the authority to examine the validity/legitimacy of the certificates of priority and to approve/reject such certificate along with the request of transfer claimed on such basis."

Sub Para 3 of Para 5 of aforementioned guidelines is



required to be taken into consideration. Undisputedly respondents' spouse is working with the concerned Zila Parishad as Panchayat Teacher. Such Panchayat Teacher would fall under the definition of State government employee or not? In the light of Para 9 and 11 of the counter affidavit of the State read with the fact that there is no master and servant relationship between the State government and spouse of the respondent who is working as Panchayat Teacher.

Perusal of various provisions of the Bihar Panchayati Raj Act, it is evident that it is a separate entity in other words it is a local body. The State government role is only to fund the Zila Parishad. The internal functions of the Zila Parishad is left to the Zila Parishad except to the extent of funding and supervision of certain issued of the Zila Parishad, is vested with the State government. Therefore, the Central Administrative Tribunal has committed error in extending relief sought by the respondent herein insofar as transfer of respondent with reference to his spouse who is working as a Panchayat Teacher. The Central Administrative Tribunal has failed to appreciate whether Panchayat Teacher has a nexus or a master and servant relationship with the State government or not?

Perusal of Bihar Panchayati Raj Act and its provision



it is crystal clear that staff of the Gram Panchayat and other local bodies have no nexus with the State government except State government providing funds and overall supervision in respect of financial and other deputed officials to the Zila Parishad/Gram Panchayat etc. Therefore the order of the Central Administrative Tribunal dated 21.10.2021 passed in Original Application No. 050/00338/2021 (MA/050/00432/2021) stands set aside while affirming the order of transfer of the respondent. The petitioners are at liberty to take fresh decision insofar as transfer and posting of respondent, if it is warranted at this juncture.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

shoaib/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.01.2023.
Transmission Date	

