

**O.A./050/00108/2021, 109/2021, 127/2021,
299/2021, 301/2021, 308/2021, 309/2021 & 323/2021**

02/07/2021

Present through Video Conferencing:-

Shri M.P. Dixit, ld. counsel for applicant in all the O.As.
Shri G.K. Agarwal, ld. ASC for respondents in all O.As.

1. Applicants of all aforesaid eight OA are Teaching/Non Teaching staff of Navodaya Vidyalaya Samiti and their respective spouses are working in different capacities as school teacher etc. in the State of Bihar. Needless to say that pleading in four OA, namely in O.A Nos. 108/2021, 109/2021, 127/2021 & 299/2021 is complete and they are at the stage of final hearing whereas rest are at the stage of admission hearing, issue involved in all these OAs is almost common, applicants of all these OAs are represented by one and same counsel and counsel for respondents of a these OAs is also one and therefore, by consent all these OAs are being taken together.
2. Previously, as has been pleaded by applicants they were being treated in “Protected Deemed Category” for the purpose of Transfer but respondents at present, for the purpose of Transfer Drive of year 2020 treated them in Deemed Category and not in “Protected Deemed Category” and thus is their Transfer Order. It appears that controversy erupted when State of Bihar intimated the Navodaya Vidyalaya Administration that employee/teacher of schools has been de-centralized and at present school are being run by Panchayati Raj Sansthan & Municipal Administration etc. and the

teacher employed in said schools are employee of those particular local bodies and not of State. The issue that has evolved in all aforesaid OA is whether the applicants of the O.As are falling or not within the “Protected Deemed Category” and are covered under valid spouse category for transfer policy?

3. Primary plea of applicants in pleading is that their spouse is employee under the Government of State of Bihar and thus applicants are falling within the category of “Protected Deemed” and therefore, for transfer purpose they had to be treated under that category. As noted above pleadings in four OA, including in lead case (OA No. 108/2021) is complete. As per written statement filed stand of the respondents centered around the plea that applicants are not falling within the ambit of “Protected Deemed” category as theirs spouse are no more employee under the Government of State of Bihar. Counsel for applicants while pressing the OA did urge today that since the spouse of the applicants are teacher under local authorities of the State of Bihar therefore the spouse can be treated as employee of the State Government and the counsel for respondents submits that in written statement specific stand of the respondents is that when spouse of applicants being not employee of State of Bihar, applicants cannot be treated under “Protected Deemed” category.
4. Though core of pleadings and submissions made at Bar tends to indicate that whether the employee falls or not within the ambit of “Protected Deemed” category

depends upon the status of his/ her spouse as the employee under the Government of State but surprisingly no guidelines as to who can be said as working spouse is neither on record nor has been provided by counsel of either of the parties to the lis. Upon enquiry as to where is the requirement that for coming within the ambit of “Protected Deemed” category spouse must be in the service of State Government, learned counsel also could not show any material.

5. The only document on record, for understanding nature of vacancy and its compilation at JNV for transfer drive is letter No. F.2-1/2020(ATD)-NVS(Estt.II) 4317 dated 20/02/2020 (Annexure A/5) and it provides that online vacancy module has three categories of vacancies viz. **“actual vacancy”**, **“deemed vacancy”** & **“protected deemed vacancy”**. Para 4 (iii)(c) of said letter speaks about the employees covered under **“Valid Spouse”** category. It has been stated therein – *“Employee having working spouse (as per guidelines) in any district of the same state or adjoining districts of the adjoining states/UT will be marked as “Protected Deemed”. The certificate must be issued by a valid authority and is properly checked by the Principal & the RO for availing protection by employees under priority clause.”*
6. From bare reading of aforesaid Para 4 (iii)(c) it appears that to be marked as “Protected Deemed” the employee needs having spouse which can be said as working spouse as per guidelines and the spouse is employed in any district of the same state or adjoining districts of the

adjoining states/UT. Thus whether the spouse is the working spouse it needs to be determined as per guidelines.

7. Taking note of entirety, we are of the view that for just & proper adjudication it would be appropriate to give one opportunity to the parties to lis to place on record the guidelines applicable, to determine as to who is working spouse for determining the necessary requirement of this Protected Deemed category. Applicant's counsel states that no such guideline is there and learned counsel for respondents submits that guidelines if would be available would be provided within a week.
8. The Dy. Commissioner, Navodaya Vidyalaya Samiti, Respondent No.2 herein thus is directed to take necessary steps to make available the guidelines, if there is any, on or before the next date. If no guidelines are provided by the respondents, it will be treated that there is no such guidelines and matter shall be decided as per available materials. Copy of this order be supplied, through email to counsel of parties to lis and if email address of Respondent No.2 is available one copy may be sent to him also, however, it shall be responsibility of counsel of respondents to inform Respondent No.2.
9. Learned counsel for applicant, at this stage pressed for interim relief submitting that there is every possibility that applicants would be relieved before next date and learned counsel for respondents opposed any ad-interim relief stating that guidelines would definitely be provided within a week and matter may be disposed of finally

thereafter. Having taken note of entirety it deems fit and proper to give short adjournment and not to pass any order relating to ad-interim relief at this stage but to await for guidelines, which probably would be made available by next date.

10. Original order passed be placed on the record of OA No. 108/2021 and copy of this order be placed on record of each other OA to which this order relates.
11. List these matters on 08.07.2021.

[Sunil Kr. Sinha]
Member (A)

[M.C. Verma]
Member (J)

skS/-