

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 155 of 2025

Appellant :- State Bank of India Thru. Chief General Manager and another

Respondent :- Sri Rajeev Shukla

Counsel for Appellant :- Anurag Srivastava

Counsel for Respondent :- Aftab Ahmad

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. This appeal is directed against order dated 06.03.2025 passed by learned Single Judge in Writ - A No. 7028 of 2024, whereby the petition, filed by the respondent against order dated 02.08.2023, whereby he has been transferred from Lucknow to Bareilly as Assistant General Manager, has been allowed and the order dated 02.08.2023 and consequential order dated 07.05.2024, whereby the respondent has been transferred within Bareilly have been quashed.

2. The respondent, who was posted as Chief Manager (SMGS-IV) in the appellant-Bank participated in the promotional exercise for his promotion to the higher post of Assistant General Manager (SMGS-V) and for the purpose, as required, had given undertaking, *inter alia*, indicating that if promoted, he shall have no objection to being posted at and handling any responsibilities at any of the Bank's offices in India or abroad.

3. On 20.04.2023, the respondent was promoted to the post of Assistant General Manager and on 02.08.2023, he was transferred from Lucknow to Bareilly. Immediately, on transfer, respondent moved representation against his transfer, *inter alia*, on the ground that his 17 years old son was struggling with critical disability of autism and he being caregiver, in terms of the policy of Government of India and the circulars issued by the Bank, his transfer be cancelled. The representation was declined on 29.08.2023.

4. The respondent made a complaint against his transfer before the Chief Commissioner for Persons with Disabilities under Section 75 of the Rights of Persons with Disabilities Act, 2016, wherein the Bank relied on the

undertaking given by the respondent. The respondent joined at the transferred place on 20.12.2023. The matter remained pending with the Chief Commissioner and on 07.05.2024, the respondent was transferred within Bareilly. Feeling aggrieved, the present writ petition was filed on 24.08.2024.

5. During the pendency of the writ petition, on 21.02.2025, learned Single Judge, on noticing the entire circumstances of the case, required instructions to be produced by the Bank, whether any vacancy was existing at Lucknow on the post of Assistant General Manager from which the respondent was transferred in August, 2023 and if so, the extraordinary circumstances, which prevailed on the Bank while transferring the respondent despite existence of the circulars requiring that normally, the caregiver would not be transferred from the place where he is serving and residing with the care-receiver.

6. The Bank filed its response, *inter alia*, indicating that vacancies were existing at Lucknow at the time when the respondent was transferred and that as the respondent had continued for a period of 15 years at Lucknow, and at the time of the promotion, he had given undertaking for being posted anywhere, the same being the extraordinary circumstances, which prevailed upon the appellants in transferring the respondent.

7. Learned Single Judge, after hearing the parties, came to the conclusion that the circulars issued by the Bank, use the word 'normally' for the purpose that a caregiver, when a vacancy exists in the same branch/office/town/city and found that the plea raised regarding the long stay at Lucknow and the undertaking given was not an extraordinary circumstance, requiring his transfer and consequently, allowed the petition.

8. Learned counsel for the appellant made vehement submissions that the learned Single Judge was not justified in allowing the writ petition. It was submitted that once the respondent has filed undertaking, clearly stating that he shall have no objection to being posted at and handling any responsibilities at any of the Bank's offices in India or abroad, on being promoted, he was estopped from challenging the order of transfer.

9. Submissions have been made that once, after taking into consideration, the undertaking given by the respondent, he has been promoted, he cannot turn

around and question the order of transfer, based on circulars relating to caregivers to disabled dependents and consequently, the order impugned deserves to be quashed and set aside.

10. By order dated 28.04.2025, counsel for the appellant was granted time to make submissions with regard to the consequences, in case, the respondent had not given the undertaking, which was sought to be used as estoppel by the appellant-Bank in his seeking to question the transfer on account of the fact that he is a caregiver to a disabled dependent.

11. Learned counsel for the appellant, on instructions, submitted that even if, the undertaking was not given, the respondent was still eligible to be considered for promotion, however, the non-submission of undertaking would have been taken note of while considering his case for promotion. Further, moral ground was sought to be agitated that in case, after giving an undertaking, in a particular manner, respondent succeeds in flouting the same, the same would set up a wrong precedent and therefore, the order impugned deserves to be quashed and set aside.

12. Learned counsel for the respondent supported the order impugned. Submissions have been made that the applicability of the circulars pertaining to non-transfer of employee, who is also caregiver of disabled dependent, even on promotion, if a vacancy exists, has not been denied and the submissions made, based on the giving of undertaking, cannot be countenanced inasmuch as the appellants, despite being aware of the status of the respondent on account of which he was serving at Lucknow for over 15 years, on giving undertaking for consideration of his case, when now it is being pointed out that the undertaking was not an eligibility condition for promotion, the same cannot be used for depriving the respondent from undertaking his obligation as a caregiver to his disabled child and therefore, the appeal deserves dismissal.

13. We have considered the submissions made by counsel for the parties and have perused the material available on record.

14. The facts are not in dispute regarding the disability of respondent's child and his status as a caregiver and the circulars issued by the Bank that an

employee, who is also a caregiver of a disabled dependent should not normally be transferred even on promotion if a vacancy exists in the same branch/office/town/city. The fact that there were no extraordinary circumstances for transferring the respondent is also established, in view of the submissions made before the learned Single Judge indicating his long stay at Lucknow and the fact that he had given an undertaking as the only circumstance.

15. A lot of emphasis has been placed on the undertaking given by the respondent and estoppel was sought to be claimed on account of giving of such an undertaking. As noticed hereinbefore, for assessing the necessity of such undertaking and consequence of not giving such undertaking when the appellants were called upon in this regard, it was specifically indicated that non-filing of such undertaking could not have made the respondent ineligible for promotion. Once the filing of undertaking is not one of the conditions of eligibility for promotion, no estoppel can be claimed, based on the said undertaking given by the respondent. In peculiar circumstances wherein on the one hand, his career prospects and at the other hand, his moral obligation qua his disabled child were at stake, giving of undertaking can't be used against him.

16. The submissions made regarding setting up of a wrong precedent in giving undertaking and getting away by flouting the same is concerned, the said plea, apparently, is not available. Once the requirement of such undertaking is not part of the eligibility, claiming undertaking, dehors the eligibility conditions, cannot be enforced in violation of the other binding circulars especially relating to providing care to a disabled child.

17. In view of the above factual and legal position, we do not find any good ground to interfere with the order passed by learned Single Judge.

18. The appeal has no substance, the same is, therefore, dismissed.

Order Date :- 20.5.2025

Mukesh Pal

(Jaspreet Singh, J) (Arun Bhansali, CJ)