



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14419 OF 2024

Bharti Neeraj Chaourasiya ...Petitioner
Versus
Indian Overseas Bank Thr
Assistant General Manager And Ors ...Respondents

...

Adv. Hamza Lakdawala, Mohammed Najmi, Racheeta Chawla,
Maria Najmi i/b Mohammed Najmi for the Petitioner.
Adv. Priyanka K. a/w Rishi Bekal i/b B. K. Ahsok for the
Respondents.

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CORAM : BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.
DATE : 3rd JANUARY, 2025

ORAL JUDGMENT (PER BHARATI DANGRE, J) :-

1. On 18th December, 2024 the following order was
passed:-

"1. After various rounds of hearings in this matter on 25th November, 2024, 4th December, 2024 and 16th December, 2024, the learned Advocate representing the Petitioner submits, on instructions from the Petitioner who is present in the Court, that the Petitioner is giving up her promotion and prays for reversion on the earlier post held at Mumbai, only with the intention and purpose of living with her child in Mumbai, who is almost 95% visually impaired and is unable to lead his day to day life on his own, though he may appear to be around 10 years of age. The Petitioner mother desires to sacrifice her promotion for the sake of the child.

2. The learned Advocate representing the Bank submits that the Petitioner may tender an email representation in a day or two, along with documents as may be desired to be cited. The request would be considered and the Petitioner would be brought back to Mumbai from 1st January, 2025 by recording that the promotion is given up.

3. The Petitioner is agreeable in the light of the above. On the joint request of the parties, this Petition is kept pending and would be listed on 3rd January, 2025 for disposal."

Today, the Petition is listed before us for disposal and by consent of the counsel appearing for the respective parties, we issue Rule. Rule is made returnable forthwith. By consent of the parties, taken up for final hearing.

2. What startled us, is the approach adopted by the Respondent employer, who was earlier represented by Mr. Shah and on hearing the grievance of the Petitioner, conceded before the Court that she is ready to give up the promotion and sought for her reversion provided, she is permitted to work in Mumbai, so as to enable her to effectively cater to her 95% visually impaired child aged about 10 years.

The order clearly reflected the sacrifices made by a mother for the sake of her child.

Despite, a statement made before us that if a Petitioner makes a representation to that effect, the request could be considered and she would be brought back to Mumbai w.e.f 1st January, 2025, by recording that she is ready to give up her promotion, today, there is change of heart at the management level and this is reflected with the change in the counsel.

Mr. Rishi Bekal who represent the Bank today, very candidly submit that the bank had all the intention to consider the request of the Petitioner, but it do not have any policy, which will enable him to do so.

The Petitioner finding herself in such a difficult scenario, made a representation to the Respondent requesting for cancellation of her promotion and bringing her back to Mumbai which they have rejected on 24th September 2024. We also informed that pursuant to our order dated 18th December 2024, on 31st December 2024, the Petitioner has been communicated to the Respondent-Bank that once she had accepted the promotion, the process has become irrevocable as per the existing guidelines.

This Statement coming from the newly appointed counsel on behalf of the Bank, annihilate the very spirit of it being an ideal employer and particularly, when what the employee is seeking only her retention at Mumbai, on account of the perilous situation, in which she find herself along with his son.

For the sake of the challenging task of dealing with her differently abled child, she has offered to forego her promotion as Assistant Manager and in her act, we can well appreciate the concern of a mother for her child. However, the counsel for the Bank insisted that she appeared for examination on multiple occasions and upon having cleared the examination for

promotion, now she cannot refuse the promotion. He also highlight that on being promoted she has being placed in Chennai, a metro city, where her child can be well catered to.

3. We really find difficult to appreciate the stand of the bank, as we are of the firm opinion that it is the mother, who can take a better decision for her own child and definitely she will not be rely upon the decision of a stranger and specifically those in the helm of affairs of the bank, who feel that Chennai would be a better place for her son.

As a mother she understand the difficulties posed by her 10 year old child, and is conscious of the arduous task in shifting him to new environment and probably her apprehension is that he may be putting him in a onerous scenario, if he is uprooted from the present place and shifted to a new place in new surroundings.

In any case, we do not find any fault with the conscious decision taken by the mother, as obviously she is expected to act in better interest and welfare of her own child.

4. What surprises us is the stand of the Respondent bank, that there is no prevailing policy and therefore, it cannot accept the request of the Petitioner permitting her to continue in Mumbai, despite the fact that she is ready to forego her promotional post, which she has in fact being appearing through

by the competitive examination conducted by the department and having succeeded in that, she is now dragging her feet for taking of the promotional post in the interest of her child. We feel that for consideration of a situation like this lack of a Policy may not be an impediment but lack of sympathetic approach, on part of an employer, definitely is.

We made it clear to the learned counsel, that we can see the change in the situation, since what was perceived by the bank is, by change of the counsel, the Court would also change its prospective/view, but we are surely not moved by the argument advanced by the newly appointed counsel, as we find that the bank is noway going to be impacted, if the Petitioner who has rendered 13 years of service with an unblemished record to her credit in Mumbai if she is brought back to the post of Clerk held by her in past and on having made up her mind to forego the promotional post.

We expected from the bank to act as an ideal employer, who would have considered the request of the Petitioner in the peculiar circumstances and as indicated by us in our order dated 18th December, 2024, brought her back to Mumbai w. e. f. 1st January, 2025, but today, we find that on the pretext that there is no power in the bank to do so, no decision has been taken by the bank and the Petitioner is not brought back.

We are also informed that the Petitioner has already joined at Chennai, but is facing difficulties in catering to her child, which has prompted her to make a request to forego the promotion and join back on her original post.

We are not told about any administrative difficulty in permitting to do so, as the bank would find some other employee to fill up the said promotional post of the Assistant Manager in Chennai, but a child may not find a substitute for mother.

5. This is the precise reason while we intend to step in and come to the rescue of the Petitioner, who we have been informed to have taken up the promotional post pursuant to the order dated 12th April, 2024, but, do not intend to continue on the said post, as she desire to go back.

We are conscious the of difficulty faced by an employer in dealing with an employee, who had already availed the promotion and joined the post, to be reverted back to the post of Clerk, but, when the Petitioner herself has conceded by submitting that she is ready to accept this, we see no difficulty.

With the clear understanding that the Petitioner shall not stake her claim on the promotional post at present, as she has voluntarily given it up and it is only when she desire and is ready for taking up the post of Assistant Manager, she may appear for the departmental examination which would entitle her for

promotion.

This we are making as an exception, and we see no hesitancy in holding that an employee, who is the focal point of any administration, deserves empathy, specifically, in light of facts which are placed before us, being even the Petitioner herself is suffering from an ailment, which has been projected before us through various medical certificates reflecting a small area in the left half of pituitary gland, with relatively delayed enhancement and which has been opined to represent a 'micro adenoma' advising biochemical correlation and follow up.

However, if she deemed herself to be fit enough to apply for a promotional post in future, she may avail the opportunity.

6. The learned counsel Mr. Shah representing the Bank on the earlier date has sought a discharge, but we refused to discharge him, since we find fair statement coming from him on instructions received from the Bank at the relevant time, but today the scenario is different and after recording to the aforesaid fact, we deem it appropriate to discharge him.

We deem it appropriate to clarify that for the request made by the Petitioner and to which we have acceded purely on humanitarian consideration, the Petitioner shall not be put to any adverse action in her service career.

Hence, we make the Rule absolute by directing as under :-

- a) We quash and set aside the communication dated 24th September, 2024 and the communication dated 31st December, 2024 refusing the Petitioner's reversal to the post of Clerk from the promoted post of Assistant Manager at Chennai.
- b) After canceling the promotion order issued in favour of the Petitioner on 12th April, 2024, we direct that the Petitioner shall be permitted to join w.e.f. 1st January, 2025 as a Clerk in Kandiwali (East) Branch of Mumbai.
- c) The Petitioner shall not be deprived of any monetary benefit which she has availed, when she took up the promotional post including any TA/DA.
- d) Petitioner shall be continued to work on her erstwhile post of Clerk in the same branch from where she was promoted and thereafter posted, as above.

7. Considering that despite our order dated 18th December, 2024 the Respondent Bank who was expected to consider the request of the Petitioner sympathetically, it chose to reject the representation of the Petitioner on the ground that there is no power to reverse her promotion, according to us, the entire approach lacked human sensitivity and in any case we are duty bound to come to the rescue of the Petitioner, considering the genuine cause projected before us, and which in any case was not disputed by the Respondent, we deem it appropriate to impose a cost of Rs. 25,000/- upon the Respondent to be paid to the National Association for the Blind, which cater to the differently abled persons, and the details of which are as follows:

Bank Name	: Punjab National Bank
Branch Address	: Worli Seaface, Mumbai 400030.
Bank Account No.	: 3740000100008551
Account Type	: Saving A/c
IFSC Code	: PUNB0374000

The cost shall be deposited within period of four weeks from today.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)