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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:- 29th May, 2023.

+ **W.P.(C) 15061/2022**
BADAM VERVA Petitioner
Through: Mr. Chirayu Jain & Ms. Sakshi
Dewangan, Advs.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
WELFARE BOARD & ANR. Respondents
Through: Ms. Pavitra Kaur, Advocate for R-2.
(M: 9811999292)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Background

2. In the present case, this Court is concerned with the issue of pension in respect of the Petitioner who is a building and other construction worker. The Petitioner had applied to the Delhi Building and Other Construction Workers Welfare Board (*hereinafter 'the Board'*) for release of pension as per Rule 273 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (*hereinafter 'the Rules'*).

3. Vide order dated 20th May, 2020 in ***W.P.(C) 3001/2020*** titled ***Jai Pal & Ors. v. Delhi Building and Other Construction Workers Welfare Board***, a Id. Single Judge of this Court had directed processing of applications, which were pending with the Board for release of pensionary benefits and passed the following order:



“10. At this stage, I may note that the learned counsel for the respondent no.1 has submitted that the delay in processing of the files is also taking place because of lack of adequate staff/officers in the respondent no.1.

11. Keeping in view that the claim in the present petition is for the lowest strata of the society who are most affected by Covid-19 pandemic and the consequent lockdown, it is hoped that the respondent no.2 shall ensure that adequate staff /officers are provided to the respondent no.1 to carry out the process of verification of the pending applications as also the new applications that would be received by it for grant of the benefits under the Scheme announced for the workers by the respondent no.2, as expeditiously as possible. For this purpose, the Delhi State Legal Services Authority is also requested to provide necessary assistance to the workers as also to the respondent no.1 in the process of verification.”

4. After the said order was passed directing the expeditious processing of applications for grant and release of pensionary benefits by the Board, the Petitioner as also many other beneficiaries received deficiency letters in respect of their pension applications. In effect however, the pensionary benefits have not been released.

Brief Facts

5. The Petitioner – Badam Verva, is a building and construction worker who worked for several decades. She was registered with the Board on 22nd September, 2009. As per her Registration Card, her year of retirement is mentioned as 2013. She was a resident of M-413, Savda. J.J. Colony, Delhi 110081. Her registration card reflects that her family constitutes of her husband.



Correspondence with the Board

6. She made an application for pension on 8th February, 2016. A first deficiency letter dated 11th June, 2020 was issued by the Board which directed the Petitioner to submit an affidavit stating her correct date of birth. In compliance with the said direction, the requisite Date of Birth affidavit was submitted by the Petitioner, which was received by the Board on 21st December, 2020. However, the Board rejected the application for pension on the ground that the Petitioner was not a member of the Board on the date of superannuation. The relevant extract of the order dated 21st December, 2020 is extracted as under:

“As per your labour passbook, a renewal of registration was done for a period of five years from 21.03.2010 to 21.03.2015, and the renewal was approved by the registering authority on 25.11.2014. Whereas you had completed sixty years on 01.01.2013 itself. On the said date of superannuation, you were not a live worker with the Board. There is no provision to deposit annual contribution after crossing the age of 60, therefore you are not eligible to get pension.”

7. The said rejection order was appealed to the Board as per Rule 273(4) of the Rules before the Board. The said appeal was filed on 19th January, 2021. Vide order dated 16th April, 2021, the Board remanded the matter back to the Deputy Secretary (North-West) with the direction to decide the matter afresh after giving hearing to the Petitioner. In compliance with the said order, a hearing notice dated 28th July, 2021 was issued by the Section Officer of the North West District of the Board. The relevant extract of the hearing notice is set out below:

“In your labour passbook, you were re-registered by the sanction of the competent authority from



21.03.2010 to 21.03.2015 (i.e.) for 5 years was done by the district office. The re- registration was done by the concerned official on 25.11.2014, during which time you had completed 63 years of age and after attaining the age of 60 years, there is no provision for making contribution.

As per Pension Rule 273, the pension benefit can only accrue to those registered construction workers, who are registered with the Board for at least 1 years. According to your labour passbook, you were registered with the Board from 22.09.2009 to 21.03.2010 for six months and the re-registration of your labour passbook was done on 25.11.2014 by the district office, during which time you attained the age of 63 years. There is no provision to make contribution after attaining the age of 60 years.

Therefore, in relation to this matter, you are requested to appear before the district office on 12.08.2021 at 2 pm through your representative or in person, so that appropriate action can be taken on your pension application.”

8. Thereafter, letters dated 2nd September, 2021 and 14th October, 2021 were also issued by the Board directing the Petitioner to submit the following:

- Letter to District Office informing that the Petitioner was not aware that there is no provision to submit contribution to the Board after attaining the age of 60 years.
- Bank Slip or MR Slip or other related document by which the renewal with contribution of Rs. 212/- has been done by the Petitioner on 23rd December, 2014.
- Submission of the requisite serial numbers of the records verified by the notary.



9. Representations dated 3rd November, 2021 and 24th November, 2021 were made by the Id. Counsel for the Petitioner to the Chairperson and Secretary of the Board. Thereafter, in response to the directions issued by the Secretary of the Board in meeting dated 23rd December, 2021, an affidavit dated 20th January, 2022 was then submitted by the Petitioner to the Board. A second round of representations dated 7th February, 2022 and 24th February, 2022 were made by the Petitioner.

Prior Litigation

10. Aggrieved by the non-action by the Board, the Petitioner preferred a writ petition, **W.P. (C) 6121/2022** titled ***Badam Verva v. Delhi Building and Other Construction Workers Welfare Board***. Vide order dated 18th April, 2022, the said writ petition was disposed of with the following order:

“1. This petition has been filed by the petitioner impugning communications dated September 02, 2021 and also dated October 14, 2021.

2. By the first communication dated September 02, 2021, the respondent No.1 has sought clarification from the petitioner as to why appropriate action be not taken with regard to pensionary benefits payable to him.

3. It appears that the petitioner did not respond to the communication within time prescribed which resulted in the issuance of the second communication dated October 14, 2021.

4. Mr. Jain, learned counsel for the petitioner states that the petitioner has now responded to the first communication dated September 02, 2021 by filing an affidavit (pages 208-209) which may be considered by the respondent No.1 to decide the grant of pensionary benefits to the petitioner.

5. The plea made by Mr. Jain is reasonable.

6. Accordingly, this petition is disposed of directing the



respondent No.1 to consider the affidavit filed by the petitioner at pages 208-209 dated January 20, 2022 and pass appropriate orders with regard to the claim of the petitioner for pensionary benefits. Further action shall be taken based on the decision.

7. It goes without saying that if the petitioner is aggrieved by any order to be passed by the respondent No.1 to his prejudice to file appropriate petition in accordance with law.

11. However, even after the direction to consider the case of the Petitioner for the grant of pensionary benefits, the application of the Petitioner was not decided. Constrained by the non-implementation of the order dated 18th April, 2022 of the Id. Single Judge of this Court, the Petitioner filed an application for recall of the order. Vide order dated 27th July, 2022, the said application was disposed of with the direction to the Board to decide the case of the Petitioner within 2 weeks. The said order dated 27th July, 2022 is extracted as under:

“1. This is an application filed by the petitioner seeking recall of the order dated 18.04.2022.

2. The grievance of the petitioner is that even though this Court had disposed of the writ petition with a direction to the respondents to expeditiously consider the petitioner’s plea based on her affidavit, no action has been taken thereon and resultantly the petitioner, who is an old widow, continues to suffer.

3. Issue notice. **Learned counsel for the respondent no.1 accepts notice and has no justification for the respondent not deciding the petitioner’s case in terms of this Court’s order dated 18.04.2022. He, therefore, prays for further time to comply with the same.**

4. As prayed for, the respondent is granted two weeks’ time, by way of a last opportunity, to decide the petitioner’s case in terms of the order dated 18.04.2022, failing which the Court will be



constrained to initiate contempt proceedings against the respondent.

5. The application is, accordingly, disposed of.

6. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claim and in case the petitioner is aggrieved by any order passed by the respondent, it will be open for the petitioner to seek legal recourse as permissible on law.

12. After the said order was passed by the Id. Single Judge of this Court, the Board issued a second rejection letter. The grounds for rejection of the application for pension in the said letter are extracted as under:

“As per Section 14(1) of the Delhi Building and Other Construction Workers Act - notwithstanding anything, only if a person is registered for a period of three years prior to turning 60- he/she is eligible.

Even as per Section 12(1) and Section 17 of the Delhi Building and Other Construction Workers Act you are not eligible to receive pension.”

13. Aggrieved by the said rejection of the application for pension, the present writ petition has been filed. It is the case of the Petitioner that despite repeated attempts, reminders and representations, her application for pension was not processed by the Board.

Analysis and Findings

14. The prayer in this writ petition is for sanction and release of the pension with effect from 1st February, 2019 along with applicable interest.

15. The present petition was first taken up for hearing on 1st November, 2022 and notice was issued on the said date. Subsequently, the petition was listed with other connected petitions on 10th May, 2023 and this Court has held that the present petition would be covered by the decision of this Court in ***Dulari Devi v. Delhi Building and Other Construction Workers Board***



& Anr., 2023/DHC/001341.

16. Vide order dated 24th April, 2023, notice was issued in the appeal against *Dulari Devi (supra)* preferred by the Delhi Building and other Construction Workers Board. However, it is observed that no stay has been ordered on the decision of this Court in *Dulari Devi (supra)*.

17. The Court has perused the documents and record of this petition. Insofar as the pension benefit is concerned, the SOP of the BOCW Board reads as under:

“ANNEXURE -II

- 1. Name of the Service : Pension Benefit [Rule-273]**
- 2. Category : G to C [G to C /G to B/G to G]**
- 3. Documents required for the above service**
 - a) Application in Form No. XXXV
 - b) Address proof in case of change of address

4.

Steps performed internally for the service	Time for each step / task (in days)
<ul style="list-style-type: none"> ● Receipt of application in the district concerned ● Diary & entry of application in excel format and issuance of provisional receipt. ● Forwarding to the verifying officer (IO / LO) of the concerned district. 	08
<ul style="list-style-type: none"> ● Verification / checking of documents by verifying officer (IO / LO) of the concerned district ● If documents are not in order, informing short comings to worker ● If documents are found in order, forwarding the same to the 	20



<i>recommending officer / DLC through LO / ALC of the concerned district</i>	
<ul style="list-style-type: none"> ● <i>Recommendation by recommending officer/DLC of the concerned district</i> ● <i>Forwarding of same to the Board by concerned District for approval / sanction</i> 	20
<ul style="list-style-type: none"> ● <i>Scrutiny & preparation of bills by Accounts Officer.</i> ● <i>Approval of Competent Authority i.e. Secretary Board</i> ● <i>Release of payment to beneficiary through RTGS.</i> 	12
<i>Total service delivery time</i>	60

5. *Pain areas / difficulties experienced by stakeholders for the above service: NIL*

6. *Details of the Nodal Officer who shall lead the change agenda for the above service:*

<i>Name: Dr. Rajender Dhar</i>
<i>Email ID: labjlc2.delhi@nic.in</i>
<i>Designation: Addl. L.C. / Secretary Board</i>
<i>Mob. No. 9810135369</i>

18. Further, in this regard, a communication of 12th January 2023 issued by the Chairperson of the BOCW Board records as under:

“It has been recently brought to my notice that District offices of the Delhi Building and Other Construction Workers Welfare Board have not been disposing applications of welfare claims of construction workers. Due to this pendency at district offices is increasing at an alarming rate.

In many instances reported to me, workers' claim applications are not even accepted at district offices so they do not reflect in actual pendency reports of the



Board. Workers are given future dates to visit to submit their claims, which is unethical and unconstitutional behaviour on part of the Board staff.

Where Delhi Building and Other Construction Welfare Board currently has 779369 live registered construction workers, claim applications received last year are as low as 5515, out of which only a select few got sanctioned. No claims have been disbursed by the Board since 12th October 2022 which is very disappointing.

Construction workers represent the most poor and marginalized section of our society. When they come to apply for claims they have to forego their wages for the day. But, it looks like our staff doesn't understand their pain at all, which is reflected in the increasing pendency of claim applications.

We fail to realize how much the amount of maternity, marriage, education etc. matter to the construction worker who are in urgent and dire need of financial assistance from DBOCWWB. Engagement in over documentation and unnecessary delays in disposing claim applications defeats the purpose of setting up of DBOCWWB under The Building and Other Construction Workers Act, 1996.

Despite SOP being formed of clearing claim applications within one month from the date of their receipt, applications are still pending for months and in some cases for years at almost all district offices. This kind of deliberate carelessness and lacklustre attitude towards government service by Board staff would not be tolerated.

Therefore, to correct the functioning of the Board, it is directed:

- To submit a report on pendency of welfare claim applications in each district offices stating reasons why SOP is being violated in the concerned districts.*
- To take action against the officials who are causing the delay in clearance of welfare claim applications of*



poor construction labourers.

○ *Ensure clearance of all pending applications with Board as per SOP by 22nd January 2023.”*

19. In the present petition, the only issue that has been raised by the Board is a legal issue relating to the alleged conflict between Rule 272 of the Rules and Section 14 of the Act i.e. the Petitioner was not registered for a period of three years prior to attaining superannuation. On this issue, this Court has already rendered decision in *Dulari Devi (supra)*. The relevant extract of the said decision is extracted as under:

“41. A perusal of Section 14 of the Act and Rule 272 of the Rules, may at first blush appear to be conflicting in nature. However, on a closer look, it becomes clear that they operate in two separate domains.

42. Section 14 of the Act deals with cessation as beneficiaries and Rule 272 of the Rules deals with eligibility for pension. As discussed above, as per Sub-Section (1) of Section 14 of the Act, if a worker attains the age of 60 years, the status of beneficiary ceases to operate. The second circumstance when cessation takes place is if the worker has not worked for more than 90 days in a year. Sub-Section (2) of Section 14 of the Act commences with the phrase “notwithstanding anything in Sub-Section 1”. Thus, Sub-Section 2 of Section 14 of the Act is in effect an exception to the circumstances and conditions under which a beneficiary ceases to be so.

43. Sub-Section (2) of Section 14 of the Act provides that if a worker had been a beneficiary for at least three years continuously before attaining the age of 60 years, such worker would be eligible to get benefits “as may be prescribed”. Thus, Sub-Section (2) of Section 14 of the Act is in effect creating an exception to the 90 days per annum rule stipulated in Sub-Section (1) of Section 14 of the Act. A holistic reading of the two Sub-Sections of Section 14 would therefore, mean that



if a worker has worked for less than 90 days in a year at the time when he attains the age of 60 years, he would not be treated as a beneficiary. However, the exception to this would be that if such a worker who may not have worked for 90 days or more at the time when he attains the age of 60 years, has been a beneficiary for at least three years prior to his attaining 60 years, he would continue to be a beneficiary. Therefore, even if a worker has worked less than 90 days at the age of 59, if such a worker had been a beneficiary from the age of 57 till 60, his status as a beneficiary would not cease to be so.

44. Therefore, it is clear that Section 14 of the Act is not prescribing the eligibility for a worker being entitled to pension but it is providing for conditions when a beneficiary ceases to be a beneficiary. A reading of Sub-Section (2) of Section 14 of the Act makes it very clear that the eligibility for benefits would be 'as may be prescribed'. Further, Section 2(m) of the Act mandates that 'prescribing' shall be in terms of the Rules made under the Act. Thus, cessation of beneficiary status is governed by Section 14 of the Act and eligibility for pension is governed by Rule 272 of the Rules.

45. Accordingly, there is no conflict between these two provisions as is being sought to be made out. Sub-Section (2) of Section 14 of the Act is merely an exception for the conditions of cessation as stipulated in Sub-Section (1) of Section 14 of the Act and nothing more. Any reading to the contrary would render either Sub-Section (2) of Section 14 of the Act as superfluous or Rule 272 of the Rules as otiose. Such interpretation would, therefore have to be avoided. In fact, a reading of Sub-Section (2) of Section 14 of the Act makes it abundantly clear that it is merely an exception to Sub-Section (1) of Section 14 of the Act and is not prescribing eligibility conditions for exclusion of various benefits under the Act which are prescribed



specifically and separately qua each of the benefits under the Rules.

46. *While Sub-Section (1) of Section 14 of the Act excludes beneficiaries from their entitlement to benefits due to cessation, Sub-Section (2) of Section 14 of the Act carves out and includes more persons into the net of beneficiaries. Thus, Sub-Section (2) of Section 14 of the Act is in effect a provision which intends to include a greater number of beneficiaries rather than to exclude.*

47. *The exclusion is contained in Sub-Section (1) of Section 14 of the Act and Sub-Section (2) of Section 14 of the Act provides an exception to certain classes of workers who have worked for three years who would not be excluded.*

48. *Sub-Section (2) of Section 14 of the Act is thus, an inclusionary provision and not an exclusionary one as is sought to be argued or interpreted.*

“To put it in simple terms, an illustrative example of worker ‘A’ who attains the age of superannuation on 1st April, 2022 can be taken. Under Sub-Section (1) of Section 14 of the Act, if worker ‘A’ had worked for less than 90 days between 1st April, 2021 to 31st March, 2022, he would have been excluded under Sub-Section 1 of Section 14 of the Act. However, if worker ‘A’ had been registered as a beneficiary from 2019 onwards till 2022, when he attains superannuation, the fact that he may not have worked for more than 90 days, would not disqualify him as a beneficiary. In view of Sub-Section 2 of Section 14 of the Act such worker ‘A’ would continue to be a beneficiary under the Act.”

49. **The eligibility for pension is prescribed in Rule 272 of the Rules i.e., any worker who has worked for not less than one year after the commencement of the Rules i.e., 2022 shall become eligible for pension on**



completion of 60 years. Thus, under Rule 272 of the Rules provides that all the worker would have to show is that the worker was a beneficiary under the Rules for at least one year on completion of 60 years. The pension which the worker is eligible for, shall accordingly be disbursed to him.”

20. The Petitioner in the present case has been registered with the Board since September, 2009 and at the time of superannuation, she had worked as a building and other construction worker for more than one year and had paid her contribution for the entire period. The fact that the period of contribution extended by beyond her retirement or that the renewal of membership was done after the age of superannuation cannot lead to the denial of pensionary benefits.

21. This Court takes note of the fact that a large number of construction workers are either illiterate or even semi-illiterate and hail from rural background. As has been recorded in *Builders Association of India and Ors v. Union of India (UOI) and Ors., (2007) ILR 1 Delhi 1143*, the Act being a beneficial legislation contemplates benefits for construction workers including benefits such as pension. The right of pension of construction workers cannot be deprived of, merely due to hyper-technical issues or requirements such as production of original MR Slips or serial number of the notary records.

22. The Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011, entry 372 specifies 30 days as the period during which the pension application has to be processed. However, the SOP of the BOCW Board, stipulates disposal within 60 days. Thus, it is clear that once a pension benefit application is made by the construction worker, bearing in mind the



financial status of such workers, the said application ought to be processed without any delay.

23. Accordingly, there is no justification for not processing the application for pension of the Petitioner. The Petitioner in this petition fulfilled the conditions laid down in the Act and the Rules for release of pension and other benefits he was entitled to.

24. The Court notes that in the recent decision of the Id. Division Bench of this Court dated 17th April, 2023 in **LPA 209/2023** titled **Rajo v. Delhi Building and Other Construction Workers Welfare Board & Anr.**, where it has been directed that interest would be liable to be paid upon the expiry of a period of 45 days after all the deficiencies are cleared at the rate of 6%. The relevant observations of the Id. Division Bench's order are set out below:

“12. As regards the alleged delay on the part of the respondent no.1 in processing the appellant's application for pension, it is pertinent to note that even though the appellant completed sixty years of age/superannuated on 01.01.2021, she submitted the application for sanction of pension only on 08.02.2022 i.e. more than 13 months after attaining the requisite age. It is also a matter of record, as noticed in the impugned judgment that the respondent no. 1 vide its letter dated 06.07.2022 pointed out certain deficiencies in the said pension application. The communication expressly referred to the fact that the labour card of the appellant was valid only till 13.12.2020. The said communication also requested the appellant to appear before the concerned Deputy Secretary (District-South), Delhi and provide necessary clarifications. This communication was responded to by the appellant on 05.08.2022. Thereafter, the respondent no. 1 sanctioned the pension on 06.01.2023. As rightly observed in the impugned judgment, it was only after



the requisite information was provided by the appellant on 05.08.2022, that the appellant's application for grant of pension could be processed. In view of the sequence of events and the factual position as emerges from the record, it cannot be said that the impugned judgment has incorrectly computed the period for which interest has been held to be payable.

13. The impugned judgment, taking into the account that the relevant rules do not provide any timeline within which an application for pension is to be processed, proceeded on the basis that the period of 45 days can be taken as a reasonable period for the respondent no.1 board to process the appellant's application for grant of pension. On that premise, the appellant has been granted interest @ 6% per annum on the delayed amount of pension w.e.f. 21.09.2022 (after excluding 45 days w.e.f. 05.08.2022). No fault can be found with the directions contained in the impugned judgment which are based on the peculiar facts and circumstances of the present case.”

25. Under these circumstances and keeping in mind the overall objective of the BOCW Act, Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011 and also the order in *Rajo (supra)*, it is directed that the applicable pension to the Petitioner shall be disbursed with interest at the rate of 6% w.e.f. 6th February, 2022 by 1st July, 2023.

26. Considering the nature of this case and due to the fact that the Petitioner has had to undergo a second round of litigation, that too after exercising the statutory appeal, and was denied her rightful pension for a considerably long period, costs of Rs. 25000/- are awarded to the Petitioner. The said costs shall be paid by the Board to the Petitioner within eight weeks.

27. The petition along with all pending applications, if any, is disposed of



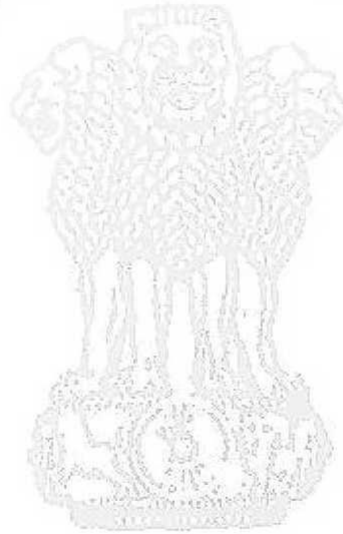
in the above terms.

28. It is made clear that the costs and payment of pension as also applicable interest shall be subject to the outcome of the appeal of the Board in, *LPA 372/2023* titled *Delhi Building and other Construction Workers Board v. Dulari Devi & Anr.*

**PRATHIBA M. SINGH
JUDGE**

MAY 29, 2023/Rahul/AM
(corrected & released on 12th June, 2023)

HIGH COURT OF DELHI



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