

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17th January, 2023

Date of decision: 13th April, 2023

W.P.(C) 13050/2021

RAGHUNATH

..... Petitioner

Through: Mr. Chirayu Jain, Advocate.
(M:7406073670)

versus

**DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
WELFARE BOARD & ANR.**

..... Respondents

Through: Mr. Abhay Dixit, Advocate for R-1.
Mr. Mohd. Shahid Khan and Mr.
Divyam Nandrajog, Advocate for R-
2. (M:9711350679)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The hearing in this case 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- Raghunath, 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 therefore, the pensionary benefits have not been released.

Brief Facts

5. The Petitioner – Mr. Raghunath is a carpenter, who worked as a construction worker for several decades. He was registered with the Board on 19th March, 2013. His date of birth as per the registration card issued by the Board is shown as 1st January, 1955 with registration number 6130338393. He was a resident of A-316, JJ Colony, Inder Colony, Delhi-

110052. His registration card reflects that his family constitutes his wife and two sons.

6. The Petitioner attained the age of superannuation on 31st December, 2014. He made an application for pension on 5th January, 2016. It is the case of the Petitioner that despite repeated attempts, reminders and representations, his application for pension was not processed by the Board.

Correspondence with the Board

7. A deficiency letter was issued to the Petitioner on 10th June, 2020 by the Board, as per which it was recorded that the age in the labour card and Aadhar card was different. The deficiency raised is as under:

“On perusing through Pension File of the registered member, it is found that age in Labour Card and Aadhar is different. Hence, age of 60 as per Aadhar Card from 1/1/1957 to 1/1/2017 is completed by Raghunath whereas his Labour card was live from 19/3/2013 to 18/2/2016: Hence, present valid registration from 19/2/2016-2017 because at the time of retirement, the worker should be registered member of the Board

Hence you are directed that you will cure the above-mentioned deficiency within 30 days so that appropriate action can be taken on your application.

Please note that if you fail to do so then neither any action will be taken on your application and nor any cognizance of it can be taken.”

8. After receiving the deficiency notice as extracted above, the Petitioner gave an affidavit confirming that his date of birth was 1st January, 1955 and also submitted his Aadhar card once again reflecting his age as 1st January, 1955. This fact was also clarified by Id. Counsel for the Petitioner vide the reply dated 17th September, 2020 to the deficiency letter issued by the

Board.

9. Ld. Counsel for the Petitioner has also contended in the reply that as per Rule 266(2) of the Rules, the age affidavit is the only prescribed proof of age. The relevant extracts of the said reply are extracted as under:

“It is submitted that the impugned deficiency letter dated 10 June 2020 wrongly records his retirement age as 01.01.2017. Whereas, the correct date as to when Mr. Raghunath turned 60 was 01.01.2015. That is the date which is recorded in his registration card and he has given the affidavit to prove his age in terms of Rule 266(2), Delhi BOCWW Rules. Copy of the age affidavit of Mr. Raghunath is hereto annexed and marked as Annexure B.

Even in the aadhaar card of Mr. Raghunath, date of birth is recorded as 01.01.2015 only. Therefore, the deficiency highlighted by you is incorrect and contrary to record. Copy of Mr. Raghunath's aadhaar card is hereto annexed as Annexure C.

It is submitted that the Delhi BOCWW Rules nowhere permit the Board to rely upon Aadhaar card for proof of age, for the reason that the data entered into UIDAI database by private operators is not reliable and cannot be the basis for ascertaining demographic facts. Whereas, on the other hand, the age affidavit is not only prescribed as proof of age as per Rule 266(2), it was also furnished at the time of registration by Mr. Raghunath.

Mr. Raghunath last renewed his registration on 19.03.2015, for the period 19.03.2015- 18.02.2016. In the present case, undisputedly, Mr. Raghunath turned sixty prior to the default taking place in terms of Rule 267(2) and Section 17(1). Therefore, it is clear that Mr. Raghunath was a registered worker at the time of his superannuation and is therefore eligible for pension as per Section 22(1)(b) r.w. Rules 272 and 273.”

10. It is the case of the Petitioner that despite this reply, the Petitioner's application has not been processed. Repeated reminders have been sent by and on behalf of the Petitioner to the Board. Again, vide a second deficiency letter dated 4th February, 2021, the Petitioner was asked to submit his valid age proof and was called to appear in person. The translated version of the said deficiency letter is extracted as under:

"Subject: Your application for availing the financial gain under Pension Benefits.

Sir/Madam

With reference to your above referred application, you have been hereby informed that after perusal and scrutiny of the applications found b your goodself, the following defects have been found, which are as under:-

1. Kindly submit the copy of your valid age proof at the District Office.

2. Your physical presence is required along with the relevant age proof at the District office.

Hence, you are hereby directed to kindly rectify the aforesaid anomalies/defects in the application within a period of 30 days, so that necessary action would be taken on the application being submitted by your goodself.

Kindly note, in case if you are unable to submit the same, no further action would be taken on the application being submitted by your goodself and no further intimation would be entertained in that regard in future."

11. In view of the fact that repeated reminders being given, no reply was received nor the Petitioner's application was processed, the present writ petition has been filed by the Petitioner- Raghunath.

Analysis and Findings

12. The prayer in this writ petition is for sanction and release of the pension with effect from 1st January, 2015 along with applicable interest.

13. This petition was first taken up for hearing on 18th November, 2021 and notice was issued on the said date. Subsequently, the petition was disposed of by order dated 31st January, 2022 with the undertaking of the Id. Counsel for the Respondent that the pension of the Petitioner would be released within 15 days. The relevant extract of the said order is extracted as under:

“Mr. Abhay Dixit, learned counsel appearing for the respondent No.1 states, he has instructions to state that pension shall be released to the petitioner within a period of 15 days as an outer limit. His statement is taken on record and in view of the same, the writ petition is disposed of.”

14. However, after the petition was disposed of, the Respondents filed an application, **CM APPL. 9360/2022** to recall the order dated 31st January, 2022 claiming that the Petitioner was ineligible to draw pension from the Board. It was the contention of the Board that to be eligible for pension, a building and construction worker needs to be a member of the Board for at least three years immediately before retirement. The relevant extract of the application for recall is extracted as under:

“5. That however, subsequently it has been observed that the petitioner has applied for beneficiary membership on date 13.03.2013 & as per his corrected Aadhar card he has completed his age of 60 years on date 01/01/2015. Thus, in this situation the legal requirement for claiming benefits of welfare scheme, as provided U/s 14(2) of Act will not be full- filled. The

requirement for claiming benefit the beneficiary member shall have continuous beneficiary membership of 3 years immediately before retirement. The provision U/s 14 (2) of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 is reproduced herein below:

(2) Notwithstanding anything contained in sub section (1), if a person had been a beneficiary for at least three years continuously immediately before attaining age of sixty years, he shall be eligible to get such benefits as may as be prescribed

*However, in the present case the petitioner after corrected aadhar card has continuous membership of 2 years on the date of his retirement and the legal requirement under section 14(2) of the Act are not fulfilled. Thus, pension cannot be released to the petitioner for non-fulfillment of requirement U/s 14(2) of the Act. The copy of the Membership Card and Corrected Aadhar Card of the petitioner are annexed herewith as **ANNEXURE-R-3 and ANNEXURE-R-4** respectively."*

15. Vide order dated 31st October, 2022, the application for recalling the order dated 31st January, 2023 was allowed by this Court on a *prima facie* view that there is a conflict between sub-Section 2 of Section 14 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 (*hereinafter 'the Act'*) and Rule 272 of the Rules. The relevant extract of the said order is extracted as under:

1. The instant writ petition came to be disposed of on 31 January 2022 with the Court taking note of a concession made on behalf of the Board by its learned counsel who submitted that pension would be released within a period of 15 days. The Board has preferred an application for recall contending that the aforesaid

concession made on an issue of law would not bind and in any case has led to a piquant situation where if the direction were to be complied with, it would result in a violation of the provisions contained in Section 14(2) of the Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act 1996. The Act envisages payment of benefits to a person who has been a beneficiary for at least three years continuously immediately before attaining the age of 60 years. In the facts of the present case, it is pointed out by learned counsel for the applicant that the petitioner applied for membership on 13 March 2013. It is their case that as per the details carried in the Aadhaar Card of the petitioner, he would have attained the age of 60 years on 01 January 2015. In view of the aforesaid, it is their contention that while the petitioner may be entitled to various other benefits, he cannot possibly be granted the benefits of pension since he had not been a beneficiary for at least three years prior to attaining the age of 60.

2. Learned counsel for the petitioner on the other hand has referred to the provisions made in Rule 273 of the Delhi Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Rules 2002 [2002 Rules], and more particularly to Rule 273(5) to submit that the proviso thereto clearly stipulates that the benefit of pension shall be extended to those construction workers who have remained registered with the Board for not less than one year.

3. This, prima facie, would raise an issue of conflict between the two which would merit consideration.

4. In view of the aforesaid, the order of 31 January 2022 is recalled. The writ petition shall stand restored to its original number.

16. A counter affidavit has been filed by the Secretary of the Board. The said affidavit is quite sketchy and does not give any basis for the rejection.

The only pleading in the counter affidavit is as under:

“4. That in order to release the pension to the petitioner, four deficiency letter have already been sent to petitioner, whereby the petitioner was made aware of the deficiency in his documents for processing the pension application. However, instead of giving proper documentation to substantiate his date of birth, the petitioner has only filed an affidavit and corrected Aadhaar card. Reliance may be placed upon the Annexure P-6 & Annexure P-7 filed by the petitioner in the petition.

xxx

xxx

xxx

6. It is further evident from the contribution register filed by petitioner at Annexure P-2 in his petition, it is evident that the petitioner has last given his contribution of membership fees on date 19.03.2015 which was valid till 18.02.2016, which affirms that petitioner is admitting that he had not attained age of 60 years on date 01.01.2015. And the subsequent act of claiming that he attains age of 60 years on 1.1. 2015 is estopped by his own representation of payment of membership fees on date 19.03.2015 as per the doctrine of estoppel.”

17. A perusal of the above counter affidavit shows that the only ground taken is that the Petitioner had made his contribution for a period between 19th March, 2015 till 18th February, 2016. The Board, therefore, takes a view that in view of the contribution having been made till 18th February, 2016 and the Petitioner could not have superannuated on 1st January, 2015, and thus, there is some deficiency in the case of the Petitioner.

18. The counter affidavit records that the age in Aadhar card has been corrected. In the written submissions, however, the issue of the conflict between Rule 272 of the Rules and Section 14 of Building and Other

Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 (*hereinafter 'the Act'*) have been raised. A detailed counter affidavit dated 6th December, 2022, has also been filed by the Secretary of the Board raising this issue once again.

19. In the overall facts of this case, the date of birth of the Petitioner in the registration card with the Board and in the Aadhar card is correctly recorded. Thus, there is no contradiction or distinction between these two documents. The only issue that has been raised is a legal issue relating to the conflict between Rule 272 of the Rules and Section 14 of the Act. On this issue, this Court has already rendered decision in ***Dulari Devi v. Delhi Building and Other Construction Workers Board & Anr.***, 2023/DHC/001341 wherein it has been held 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 March, 2013 and at the time of superannuation, he had worked as a building and other construction worker for more than one year and had paid his contribution for the entire period. The fact that the period of contribution extended by a couple of months beyond his retirement, cannot lead the inference that the date of birth was wrong or 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 they hail from rural background. It is nigh possible that their families may not preserve the proper record of date of birth and on most occasions date of birth is filled on the basis of information available with the adults in the family as also certain external events which may have occurred.

22. 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, merely due to some distinction in the date of birth as long as the identity of the worker can be established and the claim is not a fake claim or a ghost claim.

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. Therefore, the petitions for release of pension due to the workers are allowed and disposed of in the above terms.

24. The pension due to the Petitioner and applicable interest shall be released within 8 weeks, subject to necessary verification of credentials and documents, as per the Rules.

25. Considering the nature of this case and due to the fact that the Petitioner has been wrongfully denies his rightful pension for a 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.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2023
MR/AM