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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision :-29th May, 2023

+ W.P.(C) 440/2023

JEEVAN PASWAN

..... Petitioner

Through: Mr. Chirayu Jain & Ms. Sakshi
Dewangan, Advs.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
BOARD & ANR. Respondents

Through: Mr. Abhay Dixit and Mr. Ankit
Kumar, Advocates for R-1.
Mr Rishikesh Kumar, ASC, GNCTD
with Mr. Sheenupriya, Mr. Sudhir
Shukla, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM No. 26005/2023

2. Insofar this application is concerned, the Applicant, Geeta Devi, the widow of Jeevan Paswan is substituted as the Petitioner. The amended memo of parties and taken on record. **CM No. 26005/2023** is disposed of.

W.P.(C) 440/2023

Background

3. 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'*).

Brief Facts

4. The Petitioner – Jeevan Paswan, is a building and other construction worker who worked as a *painter and beldar* for several decades in Delhi and even worked under several government contractors. He was registered with the Board on 8th December, 2017 with Registration No. 41712114932. As per his Registration Card, at the time of registration he was 56 years old. He was a resident of 95/80 Nirman Majdoor Awaas Sthal, New Delhi-110088. His registration card reflects that his family constitutes his wife, two sons and one daughter.

5. The renewal of the membership of the Petitioner with the Board was processed by the Board on 18th October, 2020. The acknowledgement receipt and online registration card recording the same have also been placed on record.

Correspondence with the Board

6. The Petitioner submitted his application dated 6th January, 2021 for release of pensionary benefits to the Board under the requisite Form XXXV. A copy of the said form submitted to the Board along with receiving has been placed on record.

7. Vide letter dated 30th September, 2021, the said application for pension was rejected by the Board on the ground that the Petitioner did not complete 3 years of membership with the Board and that the total membership of the Petitioner was of only 2 years. It is the claim of the Petitioner that the letter dated 30th September, 2021 was only given to the



Petitioner in December, 2022.

8. Aggrieved by the said order rejecting his application for pension, the present petition has been filed by the Petitioner challenging the impugned order dated 30th September, 2021 as also seeking a direction to the Board for release of pension with applicable interest.

Analysis and Findings

9. The present petition was first taken up for hearing on 13th January, 2023 and subsequently. When the matter was taken up on 15th March, 2023 it was submitted by Id. Counsel for the Petitioner that the Petitioner had unfortunately passed away. Accordingly, the legal heirs were directed to be impleaded. Thereafter, the petition was tagged with other connected matters and listed before this Court on 10th May, 2023. Vide order dated 10th May, 2023 this Court had opined 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***.

10. In ***Dulari Devi (supra)*** this Court has held that the proviso to Section 14(2) of the Act referred to by the Board is only an additional inclusionary criterion, to continue memberships of beneficiaries with Construction Worker Welfare Boards and not an exclusionary criterion, as being interpreted by the Board. It is further held that any construction worker, who is registered for one year with the Board, would be entitled for pension. The relevant portion of ***Dulari Devi (supra)*** affirming the same is set out below:

“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.”

11. Accordingly, there is no justification for not processing the application for pension of the Petitioner. The present petition is covered by the decision of this Court in ***Dulari Devi (supra)***. 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.

12. 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.**, 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.”

13. 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. 10th April, 2023, i.e., 45 days after the decision of this Court in ***Dulari Devi (supra)***, when the legal position was clarified.

14. Considering the nature of this case, nominal costs of Rs.2000/- are awarded in favour of the Petitioner.

15. The petition along with all pending applications, if any, is disposed of in the above terms.

16. 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)