

\$~J-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 27.03.2023

%

Judgment pronounced on: 17.04.2023

+ **LPA 209/2023 & CM APPLs. 14917/2023, 14919/2023**

RAJO

.... Appellant

Through: Mr. Chirayu Jain and Ms. Sakshi
Dewangan, Advocates.

versus

DELHI BUILDING AND OTHER CONSTRUCTION
WORKERS WELFARE BOARD AND ANR Respondents

Through: Mr. Abhay Dixit with Mr. Ankit
Kumar, Advocates for R-1. Ms. Avni
Singh, Advocate for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

CM APPL.14919/2023 (delay)

1. In view of the averments made in the application, the same is allowed and the delay stands condoned.

CM APPL.14917/2023 (for filing of additional documents)

2. This is an application seeking filing of certain additional documents.

3. Having considered the averments made in the application, the same is allowed and the additional documents, as referred to in the application are taken on record.

4. The application stands disposed of.

LPA 209/2023

5. The present appeal has been preferred against the judgment dated 10.01.2023 passed by the learned Single Judge of this Court in W.P.(C) 15941/2022. The said writ petition was filed by the appellant seeking that the respondent no.1 be directed to release the pension payable to her under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Act 1996¹ with interest @18% per annum.

6. Vide the impugned judgment, the learned Single Judge has, *inter alia*, held as under:-

“6. Having considered the submissions of the learned counsel for the parties and perused the record, I find that while there is no dispute that the petitioner was entitled to receive pension w.e.f. 01.02.2021, it is also an admitted position that the requisite documents for sanction of pension were submitted by her only on 05.08.2022. In these circumstances, the respondent is justified in urging that pension could not be sanctioned in the petitioner’s favour without her submitting the requisite documents and, therefore, it cannot be said that there was any inordinate delay on it’s part in sanctioning the pension payable to the petitioner. Even though, both, the Act and the Rules are silent regarding the time period within which the pension must be sanctioned, in my view, the respondent, which is enjoined with a statutory duty to disburse pension in favour of these construction workers, who play a crucial role in the building of the society, ought to take expeditious steps to ensure that pension is released to them at the earliest.

7. In the present case, the petitioner submitted all the requisite documents on 05.08.2022 and therefore, even if a period of 45 days is taken as a reasonable period for the respondent to have processed the petitioner’s application for grant of pension, there is still a delay of more than three months in sanctioning the pension in her favour. Learned counsel for the respondent, except for stating that the respondent is dealing with 16 lakhs registered building and

¹ “the BOCW Act”

construction workers, is unable to provide any justification for this delay. The pension in favour of the petitioner has been sanctioned only on 06.01.2023 and that too after she was compelled to approach this Court.

8. I have also considered the decisions of the Apex Court relied upon by the petitioner, I find that the same unlike the present case, pertain to cases where the Court was dealing with grant of pension to government employees where the dates of their superannuation are known to the employers well in advance. In the present case, the Board, which is dealing with over 16 lakhs registered building and construction workers, is discharging altogether a different responsibility and, therefore, the parameters applicable in the cases of government employees cannot be made per se applicable to the Board. However, this does not imply that the petitioner should not be paid any interest at all. In my view, it would be in the interest of justice that the petitioner should be paid interest on the delayed amount of pension after discounting 45 days from the date she submitted her documents on 05.08.2022. The writ petition is, accordingly, disposed of by directing the respondent to pay interest @ 6% per annum on the delayed amount of pension with effect from 21.09.2022 (after excluding 45 days w.e.f. 05.08.2022).

9. Before I conclude, I may observe that since the Act and Rules are silent regarding the time period during which the pension must be sanctioned to these workers after they attain the age of 60 years, it would save a lot of inconvenience to these workers if they are permitted to submit their applications six months prior to their becoming eligible for receiving pension. The respondent Board is, therefore, directed to consider accepting applications of the constructions workers six months before they become eligible for receiving pension so that once they reach the age of superannuation, their pension can be sanctioned, at the earliest, without any further delay.”

7. The appellant impugns the aforesaid judgment of the learned Single Judge, contending that: (i) the learned Single Judge failed to appreciate that the appellant had submitted her pension application along with all the requisite documents to the respondent no.1 board on 08.02.2022 and the

learned Single Judge misconstrued the reply dated 05.08.2022 to the Deficiency Letter dated 06.07.2022 issued by the respondent no.1, to reach the conclusion that it was only on 05.08.2022 that the requisite documents were supplied by the appellant; (ii) the learned Single Judge erroneously observed that the BOCW Act and the Rules framed thereunder are silent regarding the time period during which the pension must be sanctioned to the workers. Reliance is placed on Rule 272 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002² to contend that the pension application was required to be processed and cleared before the first day of succeeding month after superannuation; and (iii) the learned Single Judge erroneously observed that the delay on part of the respondent no. 1 in sanctioning the pension was not inordinate. It is further submitted that the interest rate of 6% is insufficient considering the delay on part of the respondent no. 1 in sanctioning the appellant's pension, calculated from the day the appellant superannuated on 01.01.2021. It is further submitted that the impugned judgment fails to consider that there was a delay of five months on the part of the respondent no. 1 in sending the 'Deficiency Letter' dated 06.07.2022, in response to the application for pension submitted on 08.02.2022.

8. The appellant thus seeks enhancement of the interest from 6% to 18% on delayed payment of pension, with effect from 01.02.2021(as opposed to 21.09.2022 granted by the learned Single Judge) till the date pension was paid, i.e., till 02.02.2023.

9. At the outset, the contention of the appellant that Rule 272 of the BOCW Rules mandates that the pension application has to be processed and

² "the BOCW Rules"

cleared before the first day of the succeeding month after superannuation, is required to be dealt with. The said rule reads as under :-

“272. Eligibility for pension.- (1) A member of the fund who has been working as a building worker for not less than one year after the commencement of these rules shall on completion of sixty years of age be eligible for pension. The pension will become payable from the first day of the succeeding to the month in which he completes sixty years of age.”

10. A bare reading of the aforesaid rule makes it clear that what is mandated thereunder is that the pension will become payable from the first date of the succeeding month in which the concerned building worker has completed sixty years of age. The said rule does not deal with the timeline within which an application for pension submitted on Form No.XXXV, prescribed under Rule 273 of BOCW Rules, is required to be processed. Also, in the facts of the present case, admittedly, the respondent no.1 has sanctioned pension w.e.f. first date of the succeeding month in which the appellant completed sixty years of age i.e., from 01.02.2021. As such, the contention regarding infraction of Rule 272 of the BOCW Rules on the part of the respondent no.1 is completely misconceived.

11. The impugned judgment is also right in observing that the BOCW Act and BOCW Rules framed thereunder are silent regarding the time period within which an application for pension must be processed. It has also been rightly observed in the impugned judgment that it would save a lot of inconvenience, if the building workers are permitted to submit their application for sanctioning of pension six months prior to their becoming eligible for receiving pension. The respondent no.1 board has accordingly been directed to consider accepting the application for construction workers, six months before they become eligible for receiving pension so that once

they reach the age of superannuation, their pension can be sanctioned at the earliest without any further delay. It would be appropriate for the concerned respondent to frame appropriate rules in this regard.

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.

14. The appellant has also relied on the decisions of the Supreme Court in *State of Kerala v. M. Padmanabhan Nair*³; *Uma Agrawal (Dr) v. State of U.P &Anr.*⁴; *S.K. Dua v. State of Haryana &Anr.*⁵; and *D.D.Tewari (D) Thr. Lrs. V. Uttar Haryana Bijli Vitran Nigam*⁶; and of this court in *H. N. Sharma & Anr. v. Govt. of NCT of Delhi & Ors.*⁷; *Govt. of NCT Delhi v. Sh. S.K. Sharma*⁸; and *K.L. Manhas v. Union of India*.⁹ The said decisions hold that the pension/retiral benefits are not in the nature of bounty but a valuable right of an employee and that the employee would be entitled to interest on the pension/retiral benefits in case the delay in settlement or disbursement of same has occurred on account of the fault of the government department. It has been further held in these judgments that it is mandatory to initiate the process for payment according to the time-limit prescribed in the relevant rules and non-observance of the time schedule is one of the factors which the court may take into account while considering employee's request for interest on delayed payment. However, as rightly

³ (1985) 1 SCC 429

⁴ (1999) 3 SCC 438

⁵ (2008) 3 SCC 44

⁶ (2014) 8 SCC 894

⁷ W.P. (C) 1724/2017 : 2020:DHC:2595

⁸ 2017 SCC OnLine Del 12564

⁹ 2015 SCC OnLine Del 12258

noted in the impugned judgment, in all the cases relied upon by the appellant, the Supreme Court “*was dealing with grant of pension to government employees where the dates of their superannuation are known to the employers well in advance*”. Moreover, the factual matrix and context of the cases relied upon by the appellant, was completely different.

15. In ***M. Padmanabhan Nair***³ (supra), it was found that there was a culpable neglect in discharge of duty by the Treasury Officer to grant the retiring government servant the last pay certificate, which in turn delayed the release of the retiral benefits. In this background, the Supreme Court upheld grant of interest on the delayed payment of the retiral benefits.

16. In ***Uma Agrawal***⁴ (supra), it was found that there was a failure on the part of the concerned government department to take various steps for completion of the process for payment of retiral benefit which as per relevant rules was to be completed long before the retirement of the concerned employee. In these circumstances, the Supreme Court allowed interest on the delayed payment of the retiral benefits.

17. In ***S.K. Dua***⁵ (supra), the Supreme Court was concerned with a situation where the retiral benefits were withheld on account of pendency of certain disciplinary proceedings against the government employee. It was held that upon such proceedings being ultimately dropped, the concerned employee could be entitled to interest on the delayed payment of retiral benefits. The matter was remitted to the High Court for fresh disposal in accordance with law.

18. In ***D.D. Tewari***⁶ (supra), the retiral benefits of the concerned employee were withheld by the government department on the ground that some amount was due to the employer. The reasons given by the government

department were found to be erroneous and the retiral benefits were directed to be released to the concerned employee. However, since the High Court did not grant any interest on delayed payment, the Supreme Court allowed interest on delayed payment of retiral benefits in the context of the factual conspectus in that case.

19. In ***H. N. Sharma***⁷ (supra), the concerned employees retired in 2003/2004 and pension was released to them in the year 2011/2012, despite the Lt. Governor having accorded sanction for payment of retiral benefits as far back as on 22.12.2003. This Court held that after approval by the Lt. Governor, it was the duty of the government department to ensure the said decision was implemented at the earliest; the delay of seven years had not been satisfactorily explained and accordingly, the concerned employees were held entitled to the interest on the delayed release of retiral benefits.

20. In ***Sh. S.K. Sharma***⁸ (supra), the retiral benefits of the concerned employee were withheld on account of his suspension by the government department. The Central Administrative Tribunal granted interest on the retiral benefits since it was found that there were neither any disciplinary proceedings nor any criminal case pending on the date of retirement/superannuation of the concerned employee. The order of the Central Administrative Tribunal was assailed by the government department on the ground that as per extant Rules, interest was only payable on gratuity and not on entire retiral dues. This Court *inter alia* held that existence of a specific rule providing for payment of interest on delayed payment of gratuity, cannot be interpreted to mean that there was a bar on payment of interest on the other retiral dues, if not released on time.

21. In ***K.L. Manhas***⁹ (supra), the concerned employee had completed the

entire paper work and submitted necessary particulars well before his retirement, however there was a delay of six months in release of his retiral benefits since his name has been incorrectly written. This court held that the said procedural lapse could have been corrected in the shortest possible time and it should not have taken six months to correct the same. Accordingly, interest was granted on delayed payment of retiral benefits.

22. It can be seen that the factual conspectus in the present case is completely distinguishable from the factual position in the cases relied upon by the appellant. Moreover, it has been rightly observed in the impugned judgement that the scheme of the BOCW Act and BOCW Rules and the pension contemplated thereunder, is quite different from the relevant rules in the context of which the aforesaid judgements were rendered. The impugned judgement grants interest @6% p.a. for the relevant period after considering the facts and circumstances of the case. There is no rationale for enhancing the interest to 18% p.a., as sought by learned counsel for the appellant.

23. The additional documents sought to be relied upon by the appellant vide CM APPL.14917/2023 also have no bearing on the validity/correctness of the impugned order dated 10.01.2023.

24. In the circumstances, the impugned judgment does not warrant any interference; the present appeal is accordingly dismissed.

SATISH CHANDRA SHARMA, CJ.

APRIL 17, 2023/cl

SACHIN DATTA, J.