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

Date of decision:- 29th May, 2023.

\+ **W.P.(C) 6029/2022**

NAKUL BURNWAL ..... 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. Farman Ali, Ms Krishan Kumar, Ms. Usha Jamnal, Advocates for R-1.
Ms. Rachita Garg & Mr. Nipun, Advocate for R-2. (M- 7838066417)

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 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 ld. 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, many beneficiaries received deficiency letters in respect of their pension applications. Thereafter, vide order dated 30th April, 2021, this Court disposed of ***Jai Pal (supra)***, with further direction to the Board to process other pending claims in a time bound manner. The said order dated 30th April, 2021 is extracted as under:

> *"2. The present petition was initially filed by four Petitioners praying for payment of pension and relief amounts which were allocated to construction workers.*

This Court had, vide a detailed order dated 22nd May, 2020, extended this writ petition to 118 workers (one of whom was a Petitioner) and hence, 117 further construction workers.

3. The status as on today, as per the status report filed by the Delhi Building and Other Construction Workers Welfare Board (hereinafter, "Board"), is that most of the claims in the list which were submitted have been resolved. The fact that the Petitioners' claims have also been resolved is not disputed.

4. Ld. counsel for the Respondents has taken the Court through the latest status of the 118 workmen, annexed as Annexure-1 to the status report filed on 30th November, 2020. A perusal of the said report reveals that most of the workers have already received their respective pensions and claims. The number of unresolved applications are still quite a few in number. As per the status report, some applications are unresolved as there are either deficiency letters which have been issued or some of the files are still under process.

5. Insofar as the workers to whom the deficiency letters have been issued are concerned, the workers would respond to the said deficiency letters. ***Upon receiving the response, the claim/pension amounts shall be processed, in accordance with the applicable laws, within a period of three months from the receipt of the response.***

6. Insofar as the workers whose applications are under process are concerned, their applications shall be processed within a period of two months.

7. Ms. Shyel Trehan, ld. counsel for the Petitioners submits that a further list of 453 workers has been filed, consisting of claims on behalf of various construction workers and their dependants.

8. This list is a completely new list which has not yet been considered by the Board. In order to avoid multiple writs being filed, it is directed that the

> *application filed by the said 453 individuals would also be processed in accordance with law. The same shall be examined by the Board within three months. In respect of those persons whose claims are liable to be allowed, the same shall be put in process and the amount shall be disbursed expeditiously.*
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> *9. In respect of those persons whose applications suffer from any deficiencies, the deficiencies shall be pointed out and the same shall be replied to. Upon receipt of the response, the applications shall be processed within a period of two months and a decision shall be conveyed.* ***In case these claims are found to be valid and genuine, the amount shall be released within a further period of one month.***
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> *10. All rights and remedies of the workers in respect of the decisions taken by the Board are left open, in accordance with law.*
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> *11. Needless to add, this Court has not examined the individual case of any of the workers on merits.*
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> *12. Ld. counsel for the Petitioner shall supply the note dated 1st December, 2020, consisting of the list of 453 pending claims, to ld. counsel for the Respondents within two days by email.*
>
> *13. The petition is disposed of in the above terms. All pending applications are also disposed of.*

Brief Facts

5. The Petitioner – Nakul Burnwal, is a building and other construction worker who worked as a *painter* for several years. He was registered with the Board in July, 2012 with Registration No. 6120826800. As per his Registration Card, at the time of registration he was 57 years old. He was a resident of RZ A4/211 A Durga Park, Nasir pur, Palam Village, New Delhi-110045 with permanent address of 64, Cart Road, Near Nehru Mandal School, Jantara, Jharkhand 815351. His registration card reflects that his

family constitutes his wife.

Correspondence with the Board

6. After the above-mentioned orders in ***Jai Pal (supra)*** were passed, the Petitioner made a representation dated 13th September, 2021 to the Deputy Secretary for the South West District of the Board, praying for release of financial assistance on account of the Covid-19 pandemic as also pensionary benefits. Vide order dated 28th September, 2021 the Board rejected the claim for pensionary benefits of the Petitioner. The said rejection has been made on the ground that the Petitioner did not complete 3 years of membership with the Board and the total membership of the Petitioner was of only 2 years and 6 months.

7. The Petitioner preferred an appeal under Rule 273(4) of the Rules against the order dated 28th September, 2021, which rejected his application for pension. Vide order dated 28th December, 2021, the Secretary of the Board dismissed the appeal of the Petitioner citing the proviso to Section 14(2) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 *(hereinafter 'the Act').*

8. Aggrieved by the said order rejecting his application for pension and the subsequent appeal, the present petition has been filed by the Petitioner challenging the impugned order dated 28th December 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 12th April, 2022 and notice was issued to the Board. 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. A counter affidavit deposed by the Secretary of the Board has been filed on behalf of Respondent No. 1- the Board. The said counter affidavit reaffirms the contention of the Board that for drawing benefits under the Act, a person requires to be beneficiary for three years before the age of superannuation.

11. This Court has already decided the said issue in ***Dulari Devi (supra)*** and 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. 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.*
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> *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."*
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> *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."*

12. 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.

13. It has been submitted by the ld. Counsel for the Petitioner that in the meantime, during the pendency of this writ petition, the Petitioner is stated to have passed away on 17th May, 2023. Accordingly, the legal heirs of the Petitioner may furnish the requisite documentation demonstrating their status and giving fresh details of the account in which, the pension is to be remitted.

14. The Court notes that in the recent decision of the ld. 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 ld. 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.*
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> *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."*

15. The present petition is covered by ***Dulari Devi (supra)***. 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. Let the authorized legal representative of the Petitioner appear before the Board on a date fixed by the Board in June, 2023. Upon verifying the documentation, the applicable pension be released within a month

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

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

18. 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)