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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 6th February, 2023
Date of decision: 13th April, 2023

\+ **W.P.(C) 8972/2021 & CM APPL. 18541/2022**

K MURUGAN ..... Petitioner

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

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD & ANR.

..... Respondent

Through: Mr. Abhay Dixit, Advocate for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The hearing in this case has been done through hybrid mode.

2. In the present case, the Petitioner- K Murugan is aggrieved by the rejection of his application dated 21st April, 2017 by the Delhi Building and Other Construction Workers Welfare Board (*hereinafter 'the Board'*) for the release of his pension and, thus, prays for the release of the pension along with arrears with interest.

Brief Facts

3. The case of the Petitioner is that he is a construction worker who had obtained his registration with the Board in March, 2012. He had also been issued the Registration Card bearing registration number 6120321899. At that time, in the registration card his recorded age was shown as 57 years. His family is shown as consisting of his wife and one son. The Petitioner has deposited the membership fee on four occasions, i.e., March, 2012, March,

2013, March 2014 and March 2015.

4. The registration card of the Petitioner showing the deposits made by him are extracted as under:-

Date	*Amount of Contribution*	*Total Deposit Contribution*	*Next date*	*Signature of competent officer*
March 2012	*20*	*20*	*February 2013*	*-sd-*
March 2013	*44*	*64*	*February 2014*	*-sd-*
March 2014	*38*	*102*	*February 2015*	*-sd-*
March 2015	*20*	*122*	*February 2016*	*-sd-*

A perusal of the above registration card shows that the next subscription was due in February, 2016.

5. The Petitioner made an application for pension on 21st April, 2017, and submitted along with the said application, his original labour card and copies of his bank passbook, Aadhar card and photographs along with the requisite affidavit. The Board has also received the said application.

6. However, upon considering the application for pension submitted by the Petitioner, the Board issued a deficiency letter dated 9th July, 2020. The deficiency raised in the said letter is extracted as under:-

> *"On perusal of the Pension file of K Murugan, it was found that **membership in Labour card is not live**; Labour Card is live only from March 2012 to February 2016. However, when a labour retires, he should be a member of the Board. Hence, as per the documents, retirement of the Worker is on 1-1-2017. Therefore, K Murugan should present valid registration from March 2016 to 2017 because at the time of retirement, it is a*

> *must that the worker should be a member of the Board."*

7. Thus, the deficiency which was raised by the Board was that at the time when the Petitioner attain 60 years of age, he was not a member of the Board and thus, his registration was not valid.

8. The said deficiency letter issued by the Board was replied to by the Petitioner stating that he was registered as a beneficiary since 2012 and got his registration as a member with the Board renewed each year. He accepted that he had attained the age of superannuation i.e., 60 years before March 2015 and had paid renewal fees up to the year 2015. In the reply, it is also highlighted on behalf of the Petitioner that even if the age of superannuation is attained on 1st January, 2017 by virtue of the membership being valid till 2016, he would be a registered member of the Board and eligible for all the applicable benefits.

9. Thereafter, the Board issued a second deficiency letter dated 9th July, 2020 to the Petitioner. The Petitioner has also made repeated representations to the Board and its concerned officials. But the petitioner's pension application was still not approved. Ld. Counsel representing the Petitioner, has relied upon the various WhatsApp messages sent to the Board as also emails.

10. In view of the repeated representations, the Board considered the matter and rejected the Petitioner's application for pension on 2nd September, 2021 in the following terms:-

> *"This office has sent letter number 326 on date 04-06-2020, letter number 344 on date 09-07-2020 and letter number 1174 which was sent on date 19-08-2021 from District Office South West DTC Colony Pratap Nagar Hari Nagar, in which you were informed to please*

appear in the district office for pension benefits with all the documents and explain to get the release of pension. The date of birth provided by you is different in Aadhar card, Labour card and Voter ID card. For which you have not given any explanation by coming to the office. Because according to the board rule 272 (1), you are not eligible for pension. Upon inspection of your documents, it was found that you were not a live member of the Board at the time of retirement. You have turned 60 years of on 08-05-2017 as per the date of birth on your Aadhar card. Whereas your labor card was valid till February 2016, and you turned 60 years of age on 08-05-2017. Your card was not live for 14 months.

Therefore, the application for pension of the applicant is rejected. Worker can appeal to the Board as per Rule 273 Sub-section (4) within 60 days of the receipt of this rejection order."

11. In view of the fact that the application for pension of the Petitioner has been refused, the present writ petition has been filed praying for the following reliefs:-

In view of the above, the Petitioner humbly prays that this Hon'ble Court be pleased to:

A. Issue mandamus to the Respondent Board to sanction the pension application of the Petitioner and release pension arrears of the Petitioner with interest at 24%) p.a.;

B. Direct the Respondent No. 2 to initiate and conduct inquiry against all the errant officers and employees, whether permanent or contractual, as under Delhi (Right of Citizens to Time Bound Delivery of Services) Act, 2011;

C. Direct the Respondents to pay the costs to the Petitioner for having wrongfully infringed on his statutory right;

D. Pass any other order or grant any other relief as it may deem fit.

Submissions

12. The ld. Counsel for the Petitioner, however, submits that he paid the last subscription in February, 2016 - thus, his registration card should be valid till February 2017.

13. As per the Board, the Registration card of the Petitioner was only valid till February 2016. Ld. Counsel for the Respondent submits that the superannuation date of the Petitioner, as per his Aadhaar card was taken as 8th May, 2017 and, thus, on the ground that the Petitioner did not comply with the three-year requirement for release of pension under Section 14(2) of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (*hereinafter 'the Act'*). He submits that this is the reason why the prayer for release of pension has been rejected.

14. On behalf of the Petitioner, it is submitted that the rejection letter has taken the date of birth as 7th May, 1957 which is not correct as the UIDAI follows a standard by which an arbitrary date may have been put in his Aadhaar card. He, thus, submits that even after the age of 60 years, the Petitioner has been working as a construction worker. He submits that under Section 17 of the Act, even if the contribution has not been paid, the Petitioner is willing to do so and has in fact made a representation to this effect in March, 2022. However, the said representation has been rejected vide letter dated 2nd September, 2021.

15. The grievance of the Petitioner is that the date of birth should be rectified and his superannuation should be considered in terms of his identity card and not on the basis of the Aadhaar card. The further submission of the Petitioner is that either the date of birth should be taken as 1st January, 1957 as per the Registration card in which case the last membership would have

been paid within the previous 12 months and alternatively the delay in paying the last membership be condoned under the proviso to Section 17 of the Act. He relies upon the Judgement of ***State of Orissa v. Binapani Dei & Ors., AIR 1967 SC 1269*** to support his arguments. The relevant portion of the said judgement relied upon by the ld. Counsel for the Petitioner is extracted as under:

> *"10. The first respondent held office in the Medical Department of the Orissa Government. She as holder of that office, had a right to continue in service according to the rules framed under Article 309 and she could not be removed from office before superannuation except "for good and sufficient reasons."*
>
> *The State was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first respondent in the service register, <u>from holding an enquiry if there existed sufficient grounds for holding such enquiry and for re-fixing her date of birth</u>. <u>But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice</u>. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice.*

For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof.
The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences.
It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added.
If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power.
If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.
11. The State has undoubtedly authority to compulsorily retire a public servant who is superannuated. But when that person disputes the claim he must be informed of the case of the State and the evidence in support thereof and he must have a fair opportunity of meeting that case before a decision adverse to him is taken."

Analysis and Findings

16. The issue to be considered is as to whether Petitioner is entitled to pension under the Act and the Rules. Admittedly, the Petitioner was registered as a construction worker with the Board from March 2012 to February, 2016. He had paid his membership fee for four years and the next amount was due in February, 2016.

17. As per the registration card issued by the Board to the Petitioner, he was 57 years old in March, 2012. Thus, his date of birth would be of 1955. As per this date, he would attain the age of 60 years in 2015 in terms of the registration card, at which point, he was still a live member registered with the Board. Thus, the deficiency repeatedly being raised by the Board that he is not a live member at the time of attaining 60 years is fallacious and not applicable.

18. The Board has attempted to justify its stand on the ground that the Aadhar Card mentions his date of birth as 7th May, 1967.

19. Admittedly, the Aadhar card of the Petitioner was made subsequent to the registration with the Board. In terms of Rule 266 of the Rules, for the purpose of proof of age, the following documents can be considered by the Board:-

> *"266 (2) A certificate to prove age as specified below, shall also be submitted along with the application: -*
>
> *(i) School records.*
>
> *(ii) Certificate from the Registrar of Births and Deaths.*
>
> *(iii) In the absence of the above certificates, a certificate from a Medical Officer not below the rank of an Assistant Surgeon in Government Service.*
>
> *(iv)* ***<u>In the absence of the above certificates/documents an affidavit by the worker, mentioning his/her date of birth/age, duly attested by the Notary Public</u>.****"*

20. In terms of this Rule, the Petitioner would have submitted the relevant documents at the time of registration. When the Board issues the Registration Card, it ought to be presumed that it has done due diligence and approved the date given by the Petitioner. Therefore, the reflection of a

different date of birth in the Aadhar Card cannot become the basis for rejection of the Petitioner's pension when the Board has its own records to rely upon.

21. It is a matter of common knowledge that construction workers do not maintain proper records of birth. They may have been born in semi-urban or rural areas and to parents who may have not kept proper record of the date/time of birth. Usually, birth of a child is remembered by the parents, at least 60 years ago, in several parts of the country, on the basis of some festival, some event or occasion. These realities cannot be ignored by the Court especially when the case relates to a person who is well beyond 60 years of age. Thus, there could be some difference in the manner of recordal of the date of birth. Thus, discrepancies in date of birth between two documents cannot be used as a ground to reject the pensionary benefits.

22. In the present case even if the Aadhar Card is taken as determing the date of birth, the Petitioner would have attained 60 years in 2017. His membership as per the registration card was valid till February, 2016. As per Section 17 of the Act, he was a registered member of the Board and at best two more years of membership fee would have been liable to be paid. Delay in payment, if any, is also condonable under the Act and Rules. Be that as it may, the Petitioner has been a registered member for more than three years.

23. This Court has, in ***Dulari Devi v. Delhi Building and Other Construction Workers Board & Anr.***, ***2023/DHC/001341*** held that the worker would only have to show that he was a beneficiary for at least one year on completion of 60 years. The relevant extract of the said judgment 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."

24. In the present case, the Petitioner has been a beneficiary for more than three years. As per his own registration card with the Board, he attained the age of superannuation in the year 2015. The Petitioner is, thus, fully entitled to the pensionary benefits as per the Act and Rules.

25. The reliance on the Aadhar Card in order to reject the application for

pensionary benefits to the worker is completely contrary to the scheme and the spirit of the Act, which is a beneficial legislation as has been highlighted by a Division Bench of this Court in ***Builders Association of India and Ors v. Union of India (UOI) and Ors., (2007) ILR 1 Delhi 1143***. The Board which as per its annual report of 2019-2020 has more than Rs.2,000/- crores in deposits and funds ought to go by its own records rather than any extraneous document. The Aadhar card submitted by the construction worker along with his application for pension, has been incorrectly made the reason for rejection of pensionary benefits by the Board.

26. Construction workers being vulnerable section of society ought to be assisted by the Board rather than being treated in a manner as is contrary to the spirit of the Act and Rules. In the case of any ambiguity or doubt, the benefit ought to be extended to the construction worker rather than being deprived of the same.

27. The Aadhar card is not even one of the documents required under Rule 266(2) of the Rules as a document to prove age. The age of the Petitioner was already known to the Board as per the registration card which was issued by it. Under these circumstances, the rejection of the pensionary benefit is contrary to law.

28. Thus, the Board is directed to release the pension of the Petitioner within a period of eight weeks. Accordingly, the present petition is disposed of in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2023
Dj/am