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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 19th December, 2022**Pronounced on: 23rd February 2023*

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W.P.(C) 13969/2022

DULARI DEVI

..... Petitioner

Through: Mr. Chirayu Jain, Advocate.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
BOARD & ANR. Respondents

Through: Mr. Abhay Dixit, Advocate.

AND

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W.P.(C) 14432/2022

RAM SURESH

....Petitioner

Through: Mr. Chirayu Jain, Advocate.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
BOARD & ANR. Respondents

Through: Mr. Abhay Dixit, Advocate.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT**

1. The hearings in these cases have been done through hybrid mode.

Brief Facts

2. In the present case, this Court is concerned with the issue of pension in respect of two deceased building and other construction workers, namely, Smt. Ram Rati and Sh. Gauri Shankar. The Petitioners are their legal heirs. The Petitioners have 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'). However, the application for release of pension has been rejected by the Board by orders dated 23rd August, 2022 and 26th August, 2022. The said orders rejecting the application for release of pension have been impugned by the Petitioners. The brief facts in both the petitions are captured below:

W.P. (C) 13969/2022 'Dulari Devi v. Delhi Building and Other Construction Workers Welfare Board'

3. The Petitioner in this petition is Smt. Dulari Devi who is the widow of Shri Gauri Shankar Gupta who was working as a building and other construction worker for several decades in Delhi. As per the petition, his registration with the Board was processed for the first time with effect from 17th December, 2007. Copy of his registration card bearing Registration No. 4071200015 and showing that he was 58 years old on the date of Registration has been annexed with the petition. Admittedly, as per the impugned order he deposited contribution for three months from 17th December, 2007 to 17th March, 2008. On 1st January, 2009, Shri Gauri Shankar Gupta superannuated as per the date of birth mentioned in the Labour Registration card. However, while his registration was due for renewal on 17th March, 2008, his application seeking renewal was kept pending. He paid the renewal fee on 31st January, 2012, as demanded. He attained the age of superannuation of 60 years on 1st January, 2009. The application for pension is stated to have been made by the worker in the year 2012. Nevertheless, as per the impugned order, his registration is shown as being renewed till 16th October, 2012, for a fee of Rs.532/-. The computation for the said fee has however, not been given.

4. Unfortunately, he passed away in May 2021. His claim for pension was rejected by order dated 23rd August, 2022, on the following two grounds:

- (i) That he had paid the renewal fee post attainment of 60 years which is the superannuation age.
- (ii) Secondly, he was not registered for a continuous period of three years as required under Section 14(2) of the Act.

5. The impugned order dated 23rd August, 2022 reads as under:

“In respect to above subject, you are hereby informed that the application for pension submitted by Gauri Shankar (XXXIV) has been persued, and following deficiencies have been noted:

- 1. Late Gauri Shankar was registered with the Board from 17.12.2007 to 17.03.2008 (3 months);*
- 2. After 17.03.2008, in Late Gauri Shankar's passbook, no contribution was deposited. As such, at the time of superannuation on 01.01.2009, Late Gauri Shankar was a registered worker only for a period of 3 months;*
- 3. Thereafter, Late Gauri Shankar on 31.01.2012 had deposited his arrears for renewal contribution in the Board office for the period from 17.03.2008 to 16.10.2012. However, at that time, Late Gauri Shankar was 63 years 1 month old;*

As per Section 14(1) of the Delhi Building and Other Construction Workers Act, notwithstanding anything, only if a person is registered for a period of three years prior to turning 60, only then he/she is eligible;

Explanation - for the purposes of the said section, with a board the period of three years shall be added for a beneficiary in case a beneficiary is registered with some other board during the said period.

- 4. As per your passbook, you were registered for a period of three months. Therefore, you do not meet the requirement of three years membership as mentioned in Section 14(1) and thus, the application of Mr. Gauri Shankar is hereby rejected.”*

W.P. (C) 14432/2022 'Ram Suresh v. Delhi Building and Other Construction Workers Welfare Board'

6. The Petitioner in this petition is Shri Ram Suresh who is the son of Smt. Ram Rati - a building worker, who was working as coolie/beldar for decades in Delhi. She was registered with the Board for the first time on 17th December, 2007. Her registration card bearing Registration No. 4071200098 and showing that she was 58 years old on the date of Registration has been annexed with the petition. Admittedly, as per the impugned order she deposited contribution for three months from 17th December, 2007 to 17th March, 2008. On 1st January, 2009, Smt. Ram Rati superannuated as per the date of birth mentioned in the labour Registration card. However, while her registration was due for renewal on 17th March, 2008, her application seeking renewal was kept pending. She paid the renewal fee on 16th April, 2012, as demanded. She attained the age of superannuation of 60 years on 1st January, 2009. The application for pension was made by the worker on 13th July, 2012. Nevertheless, as per the registration card which was given to her, the registration is shown as being renewed for the period 17th March, 2008 to 16th October, 2012, for a fee of Rs. 532/-. The computation for the said fee has however, not been given.

7. Unfortunately, she passed away on 7th March, 2020 and when her claim for pension was made, the same was rejected by order dated 26th August, 2022, on the following two grounds:

- (i) That she had paid the renewal fee post attainment of 60 years which is the superannuation age.
- (ii) Secondly, she was not registered for a continuous period of three years as required under Section 14(2) of the Act.

8. The impugned order dated 26th August, 2022 reads as under:

“In respect to above subject, you are hereby informed that the application for pension submitted by Ramrati (XXXIV) has been pursued, and following deficiencies have been noted:

- 1. Late Ramrati was registered with the Board from 17.12.2007 to 17.03.2008 (3 months);*
- 2. After 17.03.2008, in Late Ramrati's passbook, no contribution was deposited. As such, at the time of superannuation on 01.01.2009, she was a registered worker only for a period of 3 months;*
- 3. Thereafter, Late Ramrati on 16.04.2012 had deposited his arrears for renewal contribution in the Board office for the period from 17.03.2008 to 16.10.2012. However, at that time, Late Gauri Shankar was 63 years 3 months 15 days old; As per Section 14(1) of the Delhi Building and Other Construction Workers Act, notwithstanding anything, only if a person is registered for a period of three years prior to turning 60, only then he/she is eligible;*
- 4. As per your passbook, you were registered for a period of three months. Therefore, you do not meet the requirement of three years membership as mentioned in Section 14(1) and thus, the application of Ms. Ramrati is hereby rejected.”*

Submissions

9. Mr. Chirayu Jain, Id. Counsel appearing for the Petitioners submits that in the present case, the issue would require reconciling of the provisions of the Act and the Rules - i.e., Section 14(2) of the Act and Rules 272 and 273 as also the proviso to Rule 273(5) of the Rules. He submits that the Welfare Board has various functions under Section 22 of the Act. The functions under Sub-Sections (a) to (g) of Section 22(1) of the Act are of a separate nature in comparison with the facilities and benefits under Sub-Section (h) of Section 22(1) of the Act. He relies upon the Central Government order dated 22nd

March, 2021 under the BOCW Act, 1996 to argue that social security and other coverages under Sub-Sections (a) to (g) of Section 22(1) of the Act would hold precedence over other benefits under Sub-Section (h) of Section 22(1) of the Act. The said order reads as:

“Order under Section 60 of BOCW Act, 1996

Subject: Use of Direct Benefit Transfer (DBT) for cash assistance and restriction on distribution of benefits in-kind to the registered BOCW workers by the State Building and Other Construction Workers' Welfare Board - reg.

Read: (1) Section 60 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. (BOCW Act, 1996) (2) O.M.No.1-11-11/145/2015-DBT-Cab.(Pt.) dated 31st March, 2016 of DBT Mission, Cabinet Secretariat, Government of India

Whereas, the BOCW Act, 1996 aims at regulating the safety, health, welfare and other conditions of service of BOCW workers through the Welfare Boards in every State/UT, which are administered by the respective State/UT:

Whereas, Section 22(1) of the said Act comprehensively stipulates the functions of the Welfare Board as under:

a. Provide immediate assistance to a beneficiary in case of an accident;

b. Make payment of pension to the beneficiaries who have completed the age of sixty years;

c. Sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

d. Pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

e. Give such financial assistance for the education of children of the beneficiaries as may be prescribed;

f. Meet such medical expenses for treatment of major ailments of a beneficiary or, such dependent, as may be prescribed;

g. Make payment of maternity benefit to the female beneficiaries; and

h. Make provision and improvement of such other welfare measures and facilities as may be prescribed.

Whereas, several instructions have been issued by Ministry of Labour & Employment to State Governments/UTs and respective BOCW Welfare Board to take steps for utilization of the cess fund on account of the above mentioned activities only.

Whereas, Ministry of Labour & Employment has issued Model Welfare Schemes in compliance of the Hon'ble Supreme Court Order dated 19.03.2018 and 04.10.2018 which inter- alia provides detailed guidelines for expenditure of the cess fund on the welfare schemes of the BOCW workers relating to their life and disability cover, health and maternity cover, education, housing, skill development, awareness programs and pension.

Where It has come to the notice of the Ministry that some State Welfare Boards are incurring expenditure on distribution of lantern, blankets, umbrellas, household items, tool-kits, utensils and similar other articles in-kind, leading to the apprehension of misuse/ leakage of cess fund.

Therefore, keeping in view the above position, following directions are issued to the State/ UT BOCW Welfare Boards under Section 60 of the BOCW Act, 1996-

(i) The Social security and other coverages stipulated under Section 22(1)(a) to (g) will hold precedence over any other benefit being provided to the registered workers under Section 22 (1)(h) of the Act. After meeting these priority expenses as mentioned in Section 22(1)(a) to (g) of the Act, any balance of cess fund can be utilized by BOCW Boards for giving additional benefits as per mandates given under Section 22 (1)(h) of the Act. The BOCW Boards shall submit an annual Statement to DG,

Labour Welfare by 30th April on the expenditure made on items under Section 22(1)(a) to (g) and the money remaining to be spent and actually spent on Section 22(1)(h).

(ii) Any monetary assistance under the welfare schemes are to be provided through Direct Benefit Transfer (DBT) only in the beneficiary's bank account.

(iii) No benefit is to be provided in-kind except in extraordinary circumstances such as natural calamities, epidemics, fire, accidents caused due to occupational hazard or similar other crisis, and with prior approval of the State Government and intimation to DG Labour Welfare, Govt of India.

2. This issues with the approval of Hon'ble Minister of State (IC) for Labour & Employment.”

10. According to Id. Counsel for the Petitioners, the above order would show that there are two classes of benefits for construction workers which cannot be confused with each other. He submits that pension is a basic right of all the beneficiaries who stand duly registered under the Act and the same cannot be withheld by applying Rule 272 of the Rules. Secondly, on the aspect of delay, he submits that the renewal having already been accepted and the requisite fine having also been paid by the construction worker, at the time of claim of pension having been lodged, no fault can be found with the renewal which had earlier taken place. The Board had condoned the delay and had accepted the registration of the concerned workers for the period 17th March, 2008 to 16th October, 2012. Since the concerned workers superannuated on 1st January, 2009, which was during the period when their registration stood renewed as a beneficiary, they are entitled to the claim of pension as per Rule 272 of the Rules.

11. Mr. Jain further submits that the provision of three years continuously prior to the age of attaining 60 years is in conflict with Rule 272 of the Rules which only requires registration for a period of one year. He submits that Section 14(2) of the Act would therefore have to be read for the purposes of *other benefits* as may be prescribed, as defined in the Act and cannot be applicable to *pension*. Finally, he urges that the Act and the Rules would have to be read in a harmonious manner. He also submits that the Petitioners should also be granted penal interest on the amount due to them.

12. Mr. Jain relies on the following judgements to support the case of the Petitioners:

1. *D.S. Nakara v. Union of India*, (1983) 1 SCC 305

2. *CCE v. Raghuvar*, (2000) 5 SCC 299

13. On the other hand, Mr. Abhay Dixit, Id. Counsel appearing for the Respondent submits that the Act is very clear that for all the benefits to flow to the beneficiaries, three years registration is compulsory. If the Rule is in conflict with the Act, the Act would prevail in terms of Rule 4 of the Rules which is the savings clause. He submits that unless and until, a construction worker is registered for more than three years, benefits under the Act cannot flow to the said construction worker. Secondly, it is submitted that the renewal fee was deposited after she attained the age of superannuation and thus on the date when she superannuated since she was not a registered worker, she is not entitled to benefits under the Act. The said Rule 4 reads as under:

“4. Savings.- The provisions of these rules shall be in addition to and not in substitution for or in diminution of the requirements imposed by the Act.”

14. At the end, he submits that the distinction between the benefits under Sub-Sections (a) to (g) of Section 22(1) of the Act, as against the benefits

under Sub-Section (h) of Section 22(1) of the Act, would not be of any avail to the Petitioners as the only benefit which a person attaining superannuation would be entitled to is a benefit of pension and thus the Act ought to prevail over the Rules.

Analysis and Findings

15. The short issue arising in these petitions is whether the workers/their heirs are entitled to their pensionary and other benefits as prescribed in the Act. This question has been conflated owing to the fact that on the date when the respective workers attained the age of superannuation i.e., 60 years, their registration under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Act, 1996 (*hereinafter 'the Act'*) had expired and had not been renewed. However, in all these cases, the workers have, during their life time renewed their membership after paying the renewal fees and penalties as may have been demanded by the Board. As on the date of their demise the said workers were reflected as Members on the rolls of the board.

16. In order to adjudicate the legal issues that arise, the relevant provisions of the Act as also the Rules would need to be analysed.

(i) Section 2(b) of the Act defines beneficiary as under:

(b) "beneficiary" means a building worker registered under section 12

(ii) Section 2(c) of the Act defines Board as under:

(c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of section 18;

(iii) Section 2(k) of the Act defines prescribed as under:

(k) “Fund” means the Building and Other Construction Workers’ Welfare Fund of a Board constituted under sub-section (1) of section 24;

(iv) Section 2(m) of the Act defines fund as under:

(m) “prescribed” means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

17. The Act of 1996 was a social welfare measure which was enacted in order to help unorganized labour in India whose jobs are temporary and who have uncertain working hours. The Act was the result of detailed consultations amongst various stakeholders over several years and was intended as a beneficial legislation which would benefit thousands of workers engaged in building and construction activities across the country. The Act has several features, some of which are as under:

- To regulate the employment and working circumstances of building and other construction workers;
- To provide for their safety, health, and welfare measures;
- To provide for other things associated with or incidental to building and other construction activities;
- It applies to every establishment which employs or had employed ten or more building workers in any building or other construction work on any day of the preceding twelve months.

18. The Act requires registration of establishments as also registration of building workers as beneficiaries. Under Section 11 of the Act, every building worker registered as a beneficiary is entitled to benefits provided by the Board from its fund. Under Section 12 of the Act, every building worker who has completed the age of 18 years and has not completed 60 years of age, is

eligible for registration, if the following conditions are satisfied:

- i) That the said worker is engaged in any building or other construction work.
- ii) Such engagement has to be for not less than 90 days in the preceding 12 months.

19. Sections 11 and 12 of the Act read as under:

“11. Beneficiaries of the Fund.—Subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

*12. Registration of building workers as beneficiaries.—
(1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.*

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such

decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.”

20. Upon the eligibility conditions being satisfied, a worker can make an application along with the requisite documents and obtain registration. The fee for such registration is minimal i.e., a maximum of Rs.50/-. An application for registration cannot be rejected without affording a worker an opportunity of being heard.

21. The benefits under this Act are to be passed on to the workers on the basis of the registration of the worker as a building or other construction worker with the Board. The construction worker upon being registered with the Board is termed as a beneficiary and an identity card is issued to the worker in accordance with Section 13 of the Act. Section 13 of the Act reads as under:-

“13. Identity cards.- (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.”

22. A reading of the said section makes it clear that upon a worker being registered as a beneficiary, every employer has a duty to maintain the register of such beneficiaries. A nominal contribution is collected from the employers of the workers, which is then passed on to the respective State Welfare Boards for disbursement to the construction workers.

23. Apart from the nominal contribution made by the beneficiary/worker, the fund is primarily constituted with Cess which is collected and imposed upon the employers in terms of the Building and Other Construction Workers' Welfare Cess Act, 1996. Further, the Welfare Boards constituted under Section 18 of the Act have various functions as set out in Section 22 of the Act.

24. Upon registration being granted, the beneficiary is entitled to an ID card. For the present purposes, Section 14 of the Act is extremely relevant and is set out below:

“14. Cessation as a beneficiary.- (1) A building worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year: Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least three

*years continuously immediately before attaining the age of sixty years, he shall be **eligible** to get such benefits as may be prescribed.*

Explanation.- For computing the period of three years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration."

25. Section 14 of the Act extracted above stipulates the conditions when a beneficiary would cease to be a beneficiary. As per the said provision, such cessation takes place when:

- a) the worker attains the age of superannuation i.e., 60 years;
- b) if the worker is not engaged in building or construction work for more than 90 days in a year.

Insofar as the above conditions are concerned, any absence of the worker from work due to injury or accident in the course of his employment shall stand excluded in the computation of 90 days.

26. In addition, Sub-Section 2 of Section 14 of the Act contains a non-obstante clause, the interpretation of which would be significant in the context of the present petitions.

27. As stated earlier, the fund under this Act contemplates contribution by the workers as also their employers in the form of cess.

28. Under Section 17 of the Act, if the worker fails to make the contribution for a period of one year or more, there would be cessation of the status of the beneficiary for the worker. However, the period of one year is condonable under the proviso to Section 17. Section 17 of the Act reads as under:

"17. Effect of non-payment of contribution.—When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not

less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

Thus, under the proviso if there is reasonable grounds for non-payment, the delay can be condoned and the registration can be restored.

29. The benefits to be extended to the workers under the Act are disbursed through the State Welfare Boards. Section 22 of the Act contemplates the various kinds of benefits including immediate accident benefit, pensionary benefit for workers beyond the age of 60 years, benefit of loans and advances, group insurance benefits, benefits of education for children, medical expenses for treatment of major ailments or beneficiaries and dependents, maternity benefits for female beneficiaries and other welfare measures.

30. Section 22 of the Act reads as:

“22. Functions of the Boards.—(1) The Board may—
(a) provide immediate assistance to a beneficiary in case of accident;
(b) make payment of pension to the beneficiaries who have completed the age of sixty years;
(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;
(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be

prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed— (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed, whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.”

31. As can be observed in Section 22 of the Act extracted above, the provisions contemplate prescribing of conditions, for the manner of extension of benefits, in the Rules. The GNCTD vide Notification No. DLC/CLA/BCW/01/19, dated 10th January, 2002, notified the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002. Subsequent to the notification of the said Rules, vide Notification No. DLC/CLA/BCW/02/596, dated 2nd September, 2002 the GNCTD also constituted the Delhi Building and Other Construction Workers

Welfare Board.

32. The said Rules are detailed in nature and deal with various aspects of the functioning and implementation of the provisions of the Act. As per Rule 267 of the Rules, the contribution to be made by each beneficiary in Delhi is Rs.20/- per annum with effect from 18th July, 2012. Rule 267 is relevant and is set out below:

“267. Contribution to the Fund. - (1) A beneficiary of the fund shall contribute to the Fund twenty rupees per mensem. This contribution shall be remitted in advance once in three months in any of the banks specified by the Board in the district in which the member resides.

(2) If a beneficiary commits default in the payment of contribution continuously for a period of one year, he shall cease to be a beneficiary of the Fund. However, with the permission of the Secretary or an officer authorised by him in this behalf the membership may be resumed on repayment of arrears of contribution with a fine of two rupees per month subject to the condition that such resumption shall not be allowed more than twice.”

33. As per the above Rule, cessation of membership would take place if the contribution for one year has not been made. However, the membership can be restored on payment of arrears with a fine of Rs.2/- per month. Insofar as payment of pension is concerned, the eligibility for pension is prescribed under Rule 272 of the Rules. Rule 272 and 273 of the Rules which prescribe the eligibility and procedure for release of pension read 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.*

273. Procedure for payment of pension. - (1) An application for pension shall be submitted in Form No.XXXV to the Secretary of the Board or the officer authorised by him for the purpose.

(2) If in the opinion of the Secretary of the Board or the officer authorised by him the applicant is eligible for pension, he shall sanction pension and send the pension sanctioning order to the applicant:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(3) If it is found that the applicant is not eligible for pension, the application shall be rejected, and the applicant informed accordingly.

(4) The applicant may file an appeal before the Board against the decision taken under sub-rule (3) within sixty days from the date of the receipt of the order:

Provided that the Board may for sufficient reason in writing condone the delay upto one year in filing the appeal.

(5) The amount of pension shall be One Thousand Rupees, per mensem. An increase of hundred rupees shall be given for every completed year of membership beyond five years. The Board may with the previous approval of the Government revise the pension.

Provided that the said benefit shall be extended only to those registered construction workers who have been registered with the Board for not less than one year.

(6) The pension sanctioning authority shall maintain a register in Form No.XXXVI.”

34. In addition, upon the death of a beneficiary, funeral assistance, death benefit and family pension are payable. The Rules governing the said three benefits are extracted below:

“277. Payment of Funeral Assistance. - The Board may sanction an amount of one thousand rupees to the nominees/dependents of a deceased member, towards funeral expenses. An application in Form No. XLI shall be

submitted for this benefit.

278. **Payment of Death Benefit.** - (1) *The Board may sanction an amount of fifteen thousand rupees to the nominees/dependents of a member towards death benefit, in case of death. If the death is due to an accident, during the course of employment, the nominee/dependents of the member shall be given fifty thousand rupees towards death benefit.*

XXXX

XXXX

XXXX

283. **Family Pension.** - *In the event of death of a pensioner, family pension shall be given to the surviving spouse. The amount of pension will be fifty per cent of the pension received by the pensioner or one hundred rupees which ever is higher. An application in Form No.XLV shall be submitted with such documents as may be specified by the Board within three months from the date of death of the pensioner."*

35. The submissions made in these petitions is in respect for the eligibility of a beneficiary who has attained 60 years of age and the perceived conflict between Rule 272 of the Rules and Section 14 of the Act. The submission of the Id. Counsel for the Respondent is that Section 14 of the Act requires a worker to have been a beneficiary for at least three years prior to attaining 60 years, only then such workers are entitled to the benefits under the Act, including for pension.

36. The submission by Id. Counsel for the Petitioners is that under Rule 272 of the Rules, if a worker has been a beneficiary for not less than a year after the commencement of the Rules, such worker is eligible for pension. On behalf of the Petitioners, it is argued that the Rule would prevail and the Respondent argues that the provisions of the Act would prevail.

37. Two other cases which considered pensionary benefits are -

- ***W.P. (C) 13050/2021*** titled '***Raghunath v. Delhi Building and Other Construction Workers Welfare Board & Anr.***' and

- **W.P. (C) 6121/2022** titled '**Badam Verva v. Delhi Building and Other Construction Workers Welfare Board & Anr.**'

38. In **Raghunath (supra)**. vide order dated 31st January, 2022, the Id. Single Judge, on the statement made by the Id. counsel for the GNCTD, had directed release of pensionary benefits within a period of 15 days. The said order dated 31st January, 2022 reads:

"This matter is being heard through video-conferencing.

This petition has been filed by the petitioner with the following prayers:

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

- 1. Issue mandamus to the Respondent Board to sanction the pension application of the Petitioner and release pension arrears of the Petitioner since 01.01.2015 with interest at 24% p.a.;*
- 2. Direct the Respondent Board to pay the costs to the Petitioner for having wrongfully infringed on his statutory right;*
- 3. Pass any other order or grant any other relief as it may deem fit."*

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."

39. However, an application was moved by the Board seeking recall of this order dated 31st January, 2022. Thereafter, vide order dated 31st October, 2022, the Court observed that the matter raised an issue of conflict which merits consideration and had recalled the order dated 31st January, 2022. The said order dated 31st October, 2022 reads as:

“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 [1996 Act]. It becomes pertinent to observe that Section 14(2) of the 1996 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.

5. The application shall stand disposed of.

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The Board may, if so chosen and advised, file a reply to the writ petition within a period of four weeks from today. The petitioner shall have two weeks thereafter to file a rejoinder affidavit.

List again on 17.01.2023. ”

40. In ***Badam Verva (supra)***, directions have been issued for passing of an appropriate order in respect of the pensionary benefits which was reiterated vide order dated 27th July, 2022. Thus, the issues raised in these petitions are yet undecided, as submitted before this Court.

Analysis

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.

50. Rule 283 of the Rules is the enabling Rule providing Family Pension. The said Rule reads as:

"283. Family Pension. - In the event of death of a pensioner, family pension shall be given to the surviving spouse. The amount of pension will be fifty per cent of the pension received by the pensioner or one hundred rupees which ever is higher. An application in Form No.XLV shall be submitted with such documents as may be specified by the Board within three months from the date of death of the pensioner."

51. Insofar as family pension is concerned, the surviving spouse of the worker is entitled to 50% of the pensionary benefit or Rs.500/- whichever is higher. The proviso to Rule 283 of the Rules also makes it clear that such workers who are registered for not less than one year alone would be entitled to these benefits. Thus, in order for any construction worker to be eligible for pension and the surviving spouse to be entitled for family pension, all that is required is that the worker ought to have been registered for at least a period

of one year with the Board. So long as the worker has worked for 90 days in a particular year after registering as a beneficiary under the Act and Rules upon completion of 60 years, he would be entitled for pension. Under Sub-Section 2 of Section 14 of the Act, if a worker has not worked for 90 days in a particular year but has been a beneficiary for at least 3 years when he attains the age of 60 years, even then such a person would be entitled for pension and for family pension under Rule 272 and Rule 283.

52. In *Builders Association of India and Ors v. Union of India (UOI) and Ors.*, (2007) ILR 1 Delhi 1143 while upholding the Constitutionality of the BOCW Act, a Division Bench of this Court held that the Act is a beneficial legislation aimed towards the welfare of building and other construction workers. The relevant extract of the said judgement reads as:

“5.8 The scheme of the BOCW Act indicates that the central focus of this statute is the building and construction worker and the welfare of such worker. Clearly the BOCW Act belongs to the genre of labour welfare legislation relatable to Articles 39(e), 42 and 43 of the Constitution of India. The Hon'ble Supreme Court has in Bandhua Mukti Morcha v. Union of India [1984]2SCR67 explained that such legislation would be straightaway enforceable under Article 21 which enshrines the right to human dignity. It was explained that (SCC p.184): "where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.

5.9. The BOCW Act envisages a network of authorities

at the central and State levels to ensure that the benefit of the legislation is made available to every building worker. The provisions concerning registration of workers, providing them with identity cards, constitution of Welfare Boards and registration of beneficiaries under the Fund, providing for augmentation of the Fund and specifying the purposes for which the Fund will be used, providing for the safety and health of the worker, making the contravention of the provisions of the statute punishable and entailing penalties for the violator all go to emphasise the primary purpose of the BOCW Act, which is the welfare of the building and construction worker. These aspects of the BOCW Act are sought to be supplemented in considerable measure by the making of the Central Rules in 1998. Detailed rules have been made with regards to particular aspects of safety in construction work and for the health and welfare of the workers.”

Therefore, the interpretation of various provisions of the Act should be towards the welfare of building and other construction workers, and any contrary interpretation would have to be avoided.

53. The manner in which the GNCTD seeks to read Rule 272 of the Rules and Section 14 of the Act is contrary to the plain reading of the provisions itself. Even otherwise, if it is perceived that there is any conflict between these two provisions, an interpretation which is harmonious in nature would have to be adopted by the Court in favour of the construction workers.

54. In the present two cases, the workers concerned were registered as beneficiaries on 17th December, 2007. The workers attained the age of superannuation in the year 2009. They had been recorded as beneficiaries for more than a year in terms of Rule 272 of the Rules. For various reasons, there was a period during which the said workers had failed to make part of their

contributions. During the worker's lifetime itself, the worker had made good the said shortcoming and had deposited their contributions along with the demanded penalty. Thus, by making contribution to the fund under Rule 267 of the Rules, the membership of the said workers as beneficiaries has to be deemed to have been resumed/renewed. For all benefits under the Act and Rules, the workers continue to qualify as beneficiaries and their membership cannot be deemed to have ceased. The objections taken by the Board relating to original MR slip, notary's verification number are completely untenable once the admitted position is that the deceased workers' membership was restored under Section 17 of the Act, albeit with payment of the demanded fee. Clearly, the delay in payment of membership fee cannot deprive the worker or his family of pension. The workers in these petitions fulfilled the conditions laid down in the Act and the Rules for release of pension and other benefits they were entitled to.

55. Accordingly, the present petitions for release of pension and family pension due to the workers are allowed. The applicable pension due to Late Gauri Shankar Gupta and Late Ramrati, shall be released to their legal heirs within a period of eight weeks, along with applicable interest, after verification of credentials and documents, if any.

56. With these observations, the petitions, along with all pending applications, are disposed of, with costs of Rs.25,000/- to each of the families of the deceased workers, late Gauri Shankar Gupta and Late Ramrati.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 23, 2023

Rahul/Am