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

Reserved on: 17th January, 2023
Date of decision: 13th April, 2023

W.P.(C) 13601/2021

JAGDISH ..... Petitioner
Through: Mr. Chirayu Jain, Advocate.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD & ANR. ..... Respondents
Through: Mr. Abhay Dixit, Advocate for R-1. Ms. Mreganka Kukreja, Advocate on behalf of Mr. Shadan Farasat, ASC for R-2. (M:7049007766)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The hearing in this case 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- Jagdish, a building and other construction worker. The Petitioners 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, the Petitioner as also many other beneficiaries received deficiency letters in respect of their pension applications. In effect therefore, the pensionary benefits have not been released.

5. The brief facts in both the petitions are captured below:

Brief Facts

6. The Petitioner – Mr. Jagdish is a construction worker, who worked as a mason for several years. He was registered with the Board on 20th May, 2011. His date of birth as per the registration card issued by the Board is shown as 3rd August, 1953 with registration number 4110507861. He was a

resident of H-214, JJ Colony, Bawana, Delhi-110034. His registration card reflects that his family consists of one son.

7. The Petitioner attained the age of superannuation on 2nd August, 2013. He made an application for pension on 20th March, 2017. It is the case of the Petitioner that despite repeated attempts, reminders and representations, his application for pension was not processed by the Board.

Correspondence with the Board

8. A deficiency letter was issued to the Petitioner- Jagdish on 24th June, 2020 by the Board, as per which it was stated that the Petitioner is not eligible to draw pension from the Board on the ground that renewal of the membership cannot be permitted once the worker crosses the age of superannuation i.e., 60 years. The Petitioner was directed to appear before the District Office of the Board to give reasons for applying for renewal of membership with the Board after a period of two years as also as to how the renewal was approved after attaining the age of superannuation. The relevant extract of the deficiency letter is extracted as under:

> *"As per worker's labour passbook, the last renewal was done for a period of two years from 19.05.2012 to 19.05.2014, the last renewal was approved by the registering authority on 31.12.2013. Whereas the worker completed sixty years on 03.08.2013 itself. On the said date, the worker no longer remained a live worker with the Board. There is no provision to deposit annual contribution once the worker has crossed the age of 60, therefore Mr. Jagdish is not eligible to get pension.*
>
> *Therefore, you are informed by way of this letter that you are not eligible to receive pension from Delhi Building and Other Construction Workers Welfare Board. You are given one opportunity to appear before*

District Office North-West and clarify as to why you applied for renewal for a period of two years from 19.05.2012 to 19.05.2014 and as to why your renewal was approved on 31.12.2013. You are asked to clarify within 15 days.
If you are unable to do so, your application shall be rejected without any hearing and no cognizance shall be taken in future in this regard."

9. The ld. Counsel for the Petitioner vide reply dated 25th July, 2020 set out the reasons for the delay in applying for pension and claimed that the error was on the part of the Board and its officials, due to which the Petitioner- Jagdish had paid renewal fee for a period beyond the age of his superannuation. Further, it was also submitted that in the registration card issued by the Board, his retirement year was wrongly recorded as 2023. The relevant extracts of the reply are extracted as under:

Vide the said letter, you have raised only one objection in the present case. As per your letter, Mr. Jagdish turned 60 on 03.08.2013, and therefore ceased to be a registered worker and ought not to have continued as one by making annual contributions to the Board. As per your letter, the only query which has been raised by your office is as to why Mr. Jagdish was registered for a period from 19.05.2012 to 19.05.2014 by the registering authority on 31.12.2013.
In this regard it is submitted as follows:
1. Mr. Jagdish had been working as a mason in Delhi for several years prior to 20.05.2011, i.e., the date on which she applied for registration with the Delhi BOCWW Board.
2. ***In Mr. Jagdish's registration card (labour passbook), the date of superannuation is wrongly recorded as 2023****. Unaware about the statutory age of superannuation, Mr. Jagdish continued making annual contributions till 2016. It was* ***clearly an error on part***

of the Board's officials that Mr. Jagdish renewed for a period beyond 03.08.2013, when he had turned sixty. *In this regard, as you are aware, the workers are largely dependent upon the Board's officials for guiding them with registration, renewal process and pension & other welfare scheme applications. It was clearly an error on part of the registering authority when Mr. Jagdish's registration was renewed belatedly on 31.12.2013 (when he had applied for the same to be renewed on 19.05.2012) for a period beyond 03.08.2013.*

3. Even on subsequent dates when Mr. Jagdish applied for renewal, the Board officials failed to inform Mr. Jagdish that he no longer needed to make the annual contribution, but was instead now eligible for pension from the Board. It was only in 2017, when the union workers discovered that Mr. Jagdish had become eligible for pension years ago, and was wrongly being made to apply for renewal and pay annual contribution beyond 2013.

4. It was clearly the error on part of your officers including the Registering Authority, due to which excess contribution was levied from Mr. Jagdish. Your officers clearly erred in not realising that Mr. Jagdish would be turning 60 in 2013, and therefore would cease to be a construction worker, and as such they ought not to collect lumpsum renewal contribution for 2012-14 and subsequent years, beyond 2009.

5. Workers like Mr. Jagdish are not well literate. They rely on advice and guidance of the Board's officers and employees while applying for registration, renewals and for welfare schemes. It was clearly a dereliction of duty on part of Board's officers that they failed to inform him that he became eligible for pension in 2013 itself. He cannot read/write English language, and was therefore, dependent upon your office employees and officials for guidance in all matters pertaining to registration, renewals and *applying for pension. <u>The Labour Passbook (i.e. Registration Card) and the Pension Application Form are all in English language. Neither documents provide any stipulation that the worker would be barred from receiving pension if he/she deposits annual contribution after he/she has already turned 60.</u>*

6. The said Application for Pension was filed by Mr. Jagdish on 20.03.2017. Copy of her Application for Pension dated 20.03.2017 is hereto annexed as Annexure B.

<u>For past three years, your office had failed to process Mr. Jagdish's pension application without any rhyme or reason, in complete dereliction of your duties. The belated ground taken in your letter dated 24.06.2020 received on 15.07.2020 (Annexure A) to deny pension approval to the deceased is not in accordance with BOCW Act and Rules.</u>

<u>There is also no such bar in the provisions of BOCW Act and Rules which allow the Delhi BOCWW Board to deny and reject pension claim because a worker mistakenly deposited annual contribution, when he/she was not required to do so.</u>

Therefore the ground taken by you in your letter is absolutely whimsical, illegal and malicious. It is clearly a garb to hide the ineptitude of your officials who erred by collecting excess annual contribution from Mr. Jagdish, when they ought not to have done so."

10. The Petitioner did not get any response to the said reply filed and therefore, ld. Counsel for the Petitioner made a representation dated 20th October, 2020 to the Chairperson of the Board praying for speedy processing of the pension application of the Petitioner- Jagdish and several other similarly situated building and other construction workers.

11. However, the representation made on behalf of the Petitioner did not get any response also. Thereafter, ld. Counsel for the Petitioner sought a

personal hearing before the concerned official, i.e., Deputy Secretary (North-West) of the Board. The hearing before the said official was scheduled for 31st December, 2020. However, on the said date, the Petitioner was informed that his pension application had already been rejected by the Board. The said rejection order dated 19th August, 2020 was shared with the Petitioner for the first time on the date of hearing.

12. In the said rejection order issued by the Board it was once again claimed by the Board that the Petitioner is not eligible to get pension as there was no provision to deposit annual contribution to the Board once the Petitioner had crossed the age of superannuation. It was also claimed that the Petitioner did not appear before the District Board in the prescribed and the reply to the deficiency letter dated 24th June, 2016 was not appropriate, therefore the Petitioner is not eligible to get pension. The relevant extract of the said order is extracted as under:

> *As per worker's labour passbook, the re-registration was done for a period of two years from 19.05.2012 to 19.05.2014, <u>the re-registration was approved by the registering authority on 31.12.2013. Whereas the worker completed sixty years on 03.08.2013 itself. On the said date, the worker no longer remained a live worker with the Board. There is no provision to deposit annual contribution once the worker has crossed the age of 60, therefore Mr. Jagdish is not eligible to get pension.</u>*
>
> *You were informed of the same by the District Office through Order DBOCWWB/NW/1282 dated 24.06.2020 sent to the address of Mr. Jagdish. <u>As per the Order, you had 15 days to appear before the District Board to explain your position, but what was received from you was not a reply but a legal notice, based on which, no appropriate action can be taken.</u>*

Therefore, you are informed that your application for pension welfare scheme has been rejected.

13. The Petitioner then exercised his statutory appeal under Rule 273(4) of the Rules. The said appeal was allowed vide order dated 16th April, 2021 on the ground that the Petitioner was not heard and thus, there was a violation of the Principles of Natural Justice. The relevant extract of the said order allowing the appeal is extracted as under:

> *"It is observed that the grounds of rejection as recorded by the Authorised Officer has not considered various rules/provisions applicable in the case Deputy Secretary (North West) while passing the rejection order ought to have applied Principle of Natural Justice. One the one hand the membership was continued upto 2016 but the same fact was not accepted by the Authorised Officer, thereby creating doubt on the record and entries in the Identity Card issued to the worker."*

14. A hearing notice dated 28th July, 2021 was then issued by the concerned officials of the Board on where once again the same reasons for refusal of the application were taken. In the said hearing, the ld. Counsel for the Petitioner highlighted Section 17 of the Act to claim that the Board had powers to condone the delay by the Petitioner for renewal of membership. The said hearing took place on 16th August, 2021, after which once again a deficiency letter dated 2nd September, 2021 was issued to the Petitioner. In the said deficiency letter, the MR Slip for the fee deposited by the Petitioner was demanded by the Board. The relevant extract of the said letter is extracted as under:

> *2. <u>Renewal/re-registration by you from 19.05.2012 to 19.05.2014 with contribution of Rs.78 on 31.12.2013</u>*

> *Bank slip or MR related to this has been done by you. Slip or more any other related documents which are available with you, Please submit this in the district office.*
> *3. Along with this, in the affidavit which you have put in your application, there is no record number available by the notary. Therefore, you should notarize in your affidavit.*
> *Provided number of verified records with reference to this.*

15. Finally, even before the Petitioner could respond to the said deficiency letter dated 2nd September, 2021, the Board issued the rejection order dated 5th October, 2021 on the ground that the Petitioner had not completed three years of membership with the Board before the age of superannuation.

16. Constrained by the never-ending series of letter and deficiencies, the Petitioner has filed the present writ petition. The prayer in this writ petition is for sanction and release of the pension with effect from 1st September, 2013 along with applicable interest. The counter affidavit has been filed by the Secretary of the Board. The said affidavit is quite sketchy and does not give any basis for the rejection. The only pleading in the counter affidavit is on the ground of Section 14 of the Act.

Analysis and Findings

17. In the overall facts of these cases, the date of birth of the Petitioner in the registration card with the Board and in the Aadhar card is correctly recorded. Thus, there is no contradiction or distinction between these two documents. The only issues that have been raised are legal issues relating to the conflict between Rule 272 of the Rules and Section 14 of the Act and the purported requirement of producing the original MR Slip of the deposit

made by the Petitioner. On the issue of the supposed conflict between Rule 272 of the Rules and Section 14 of the Act this Court has already rendered decision in ***Dulari Devi v. Delhi Building and Other Construction Workers Board & Anr.***, ***2023/DHC/001341*** wherein it has been held 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."

18. The Petitioner in the present case has been registered with the Board since May, 2015 and at the time of superannuation, more than one year had elapsed, since he had paid his contribution for the entire period. The fact that his contribution extended beyond his retirement, cannot lead to the inference that the date of birth was wrong resulting in the denial of pensionary benefits.

19. This Court takes note of the fact that a large number of construction workers are either illiterate or even semi-illiterate and they hail from rural background. It is nigh possible that their families may not preserve the proper record of date of birth and on most occasions date of birth is filled on the basis of information available with adults in the family as also certain external events which may have occurred.

20. The Court also observes that the building and construction workers registered with the Board may not be aware of the exact contribution that they need to make for renewing or continuing their membership with the Board. The workers are guided by the officials of the Board for the said purpose. Therefore, when the Board accepts the contribution made by the workers, it cannot refrain from disbursing the benefits the worker is entitled to as a result of accepting the contribution, unless there is any malice or foul play committed by the worker. Even if the contribution is made for a longer period than what was required or if the same is accepted after the permissible time, by paying the fine/penalty demanded, the consequential benefits cannot be denied to the Petitioner.

21. In ***Dulari Devi (Supra)*** this Court has also observed that when a worker makes good on the shortcomings and deposits the required contributions along with the demanded penalty, the membership of the said workers as beneficiaries is deemed to have been resumed/renewed by

making contribution to the fund under Rule 267 of the Rules. Further, it was also observed that the demand for original MR Slips is completely untenable once the membership of the worker is restored/resumed under Section 17 of the Act. The relevant extracts of the said judgement highlighting the same are extracted as under:

> *"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 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 to 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."*

22. As has been recorded in ***Builders Association of India and Ors v. Union of India (UOI) and Ors., (2007) ILR 1 Delhi 1143,*** the Act being a

beneficial legislation contemplates benefits for construction workers including benefits such as pension. The right of pension of construction workers cannot be deprived of, merely due to some distinction in the date of birth as long as the identity of the worker can be established and the claim is not a fake claim or a ghost claim.

23. 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. Therefore, the petitions for release of pension due to the workers are allowed and disposed of in the above terms.

24. The pension due to the Petitioner and applicable interest shall be released within 8 weeks, subject to necessary verification of credentials and documents, as per the Rules.

25. Considering the nature of this case and due to the fact that the Petitioner was unreasonably made to run pillar to post for his rightful pension for a long period, costs of Rs. 50,000/- are awarded to the Petitioner. The said costs shall be paid by the Board within eight weeks.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2023
DK/AM