$~6

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

***Date of Decision:-29th May, 2023.***

\+ **W.P.(C) 15282/2022 & CM APPL.47409/2022**

MALKHAN ..... Petitioner

Through: Mr. Chirayu Jain & Ms. Sakshi Dewangan, Advs.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD & ANR. ..... Respondents

Through: Ms. Rachita Garg & Mr. Nipun, Advocate for R-2. (M- 7838066417)

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

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

***Background***

2. In the present case, this Court is concerned with the issue of pension in respect of the Petitioner who is a building and construction worker. The Petitioner had applied to the Delhi Building and Other Construction Workers Welfare Board (*hereinafter 'the Board'*) for release of pension as per Rule 273 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (*hereinafter 'the Rules'*).

3. Vide order dated 20th May, 2020 in ***W.P.(C) 3001/2020*** titled ***Jai Pal & Ors. v. Delhi Building and Other Construction Workers Welfare Board***, a ld. Single Judge of this Court had directed processing of applications,

which were pending with the Board for release of pensionary benefits and passed the following order:

> *"10. At this stage, I may note that the learned counsel for the respondent no.1 has submitted that the delay in processing of the files is also taking place because of lack of adequate staff/officers in the respondent no.1.*
> *11. Keeping in view that the claim in the present petition is for the lowest strata of the society who are most affected by Covid-19 pandemic and the consequent lockdown, it is hoped that the respondent no.2 shall ensure that adequate staff /officers are provided to the respondent no.1 to carry out the process of verification of the pending applications as also the new applications that would be received by it for grant of the benefits under the Scheme announced for the workers by the respondent no.2, as expeditiously as possible. For this purpose, the Delhi State Legal Services Authority is also requested to provide necessary assistance to the workers as also to the respondent no.1 in the process of verification."*

4. After the said order was passed directing the expeditious processing of applications for grant and release of pensionary benefits by the Board, the Petitioner as also many other beneficiaries received deficiency letters in respect of their pension applications. In effect however, the pensionary benefits have not been released.

***Brief Facts***

5. The Petitioner – Malkhan, is a building and other construction worker who worked as a *beldaar* for several years. He was registered with the Board on 2nd August, 2011 with Registration No. 5110805134. As per his Registration Card, at the time of registration he was 55 years old. He was a resident of H. No. 17, T Hut Meerabagh, Paschim Vihar, New Delhi-

110087. His registration card reflects that his family constitutes his wife.

***Correspondence with the Board***

6. He made an application for pension on 14th March, 2017. However, vide letter dated 22nd September, 2021, the Board rejected the application for pension of the Petitioner. The grounds for the said rejection were that the Petitioner renewed his membership after attaining the age of superannuation and that he did not complete three years of continuous registration with the Board before retirement. The relevant extract of the said rejection is extracted as under:

> *"On scrutiny of Claim, the following deficiencies/ irregularities have been found and the claim has been rejected*
> *1. The worker Malkhan was registered on 02.08.2011 upto 01.08.2014. The worker applied for renewal of his labour card after more than one & half year gap (about 19 month's gap) in 16.03.2016* ***after attaining the age of sixty years****. The worker is* ***not completing at least three years of continuous registration immediately before attaining the age of sixty year*** *(As per Date of Birth of applicant in Aadhar Card is 01.01.1956.)*
> *2. According to The Building and other Construction workers (Regulation of Employment and Condition of Service) Act, 1996 as per Section 14 (2), If a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years be shall be eligible to get such benefits as may be prescribed.*

7. The said rejection order was appealed to the Board as per Rule 273(4) of the Rules before the Board. The said appeal was filed on 21st October, 2021. Vide order dated 20th May, 2022, the appellate authority of the Board disposed of the appeal with the direction to obtain the opinion of the

Board/Chairman in terms of the minutes of the meeting in terms of Agenda Item 6 of the 36th meeting of the Board dated 14th June, 2016. The said resolution for the agenda item 6 is extracted as under:

> *"Clarification in regard to non-entitlement of benefit for the lapsed period of the registration of construction worker.*
> *The Board has approved as follows:*
> *1. The benefits during the lapsed period not to be paid to the construction worker who has ceased to be the member of that particular period i.e. from the lapse of live membership till renewing of their membership by them. However, they will be entitled to receive all benefits from the date of their re-registration/resumed on repayment of arrears of contribution.*
> *2. Also, by re-registering resuming themselves on paying repayment of arrears of contribution, only they can avail the benefit of the continuity of the membership for the lapsed period and not the other benefits for the lapsed period.*
> *3. If anyone of the registered live construction worker has submitted the application for his / her claim when their membership was live but it has not processed by the Board Officials within a stipulated time span then the benefits cannot be denied to them for the period till their membership was live.*
> *Also, it is clarified that it is not necessary that they should be a live member on the date of sanctioning the benefits in such cases."*

***Analysis and Findings***

8. The prayer in this writ petition is for sanction and release of the pension along with applicable interest and quashing of the resolution for Agenda Item No. 6 of the 36th Meeting of the Board.

9. The present petition was first taken up for hearing with other connected petitions on 10th May, 2023. On the said date, this Court had

recorded that the present petition would be covered by the decision of this Court in ***Dulari Devi v. Delhi Building and Other Construction Workers Board & Anr., 2023/DHC/001341***.

10. Vide order dated 24th April, 2023, notice was issued in the appeal against ***Dulari Devi (supra)*** preferred by the Delhi Building and other Construction Workers Board. However, it is observed that no stay has been ordered on the decision of this Court in ***Dulari Devi (supra)***.

11. The Court has perused the documents and record of this petition. Insofar as pension benefits are concerned, the SOP of the BOCW Board reads as under:

***"ANNEXURE -II***

***1. Name of the Service : Pension Benefit [Rule-273]***

*2. Category : G to C [G to C /G to B/G to G]*

*3. **Documents required for the above service***

*a) Application in Form No. XXXV*

*b) Address proof in case of change of address*

*4.*

| ***Steps performed internally for the service*** | ***Time for each step / task (in days)*** |
|---|---|
| ● *Receipt of application in the district concerned*<br>● *Diary & entry of application in excel format and issuance of provisional receipt.*<br>● *Forwarding to the verifying officer (IO / LO) of the concerned district.* | *08* |
| ● *Verification / checking of documents by verifying officer (IO / LO) of the concerned district*<br>● *If documents are not in order, informing short comings to* | *20* |

| | |
|---|---|
| *worker* <br> ● *If documents are found in order, forwarding the same to the recommending officer / DLC through LO / ALC of the concerned district* | |
| ● *Recommendation by recommending officer/DLC of the concerned district* <br> ● *Forwarding of same to the Board by concerned District for approval / sanction* | *20* |
| ● *Scrutiny & preparation of bills by Accounts Officer.* <br> ● *Approval of Competent Authority i.e. Secretary Board* <br> ● *Release of payment to beneficiary through RTGS.* | *12* |
| ***Total service delivery time*** | ***60*** |

*5. Pain areas / difficulties experienced by stakeholders for the above service: NIL*
*6. Details of the Nodal Officer who shall lead the change agenda for the above service:*

| |
|---|
| *Name: Dr. Rajender Dhar* <br> *Email ID: labjlc2.delhi@nic.in* |
| *Designation: Addl. L.C. / Secretary Board* <br> *Mob. No. 9810135369* |

12. Further, in this regard, a communication of 12th January 2023 issued by the Chairperson of the BOCW Board records as under:

> *"It has been recently brought to my notice that District offices of the Delhi Building and Other Construction Workers Welfare Board have not been disposing applications of welfare claims of construction workers. Due to this pendency at district offices is increasing at an alarming rate.*

*In many instances reported to me, workers' claim applications are not even accepted at district offices so they do not reflect in actual pendency reports of the Board. Workers are given future dates to visit to submit their claims, which is unethical and unconstitutional behaviour on part of the Board staff.*

*Where Delhi Building and Other Construction Welfare Board currently has 779369 live registered construction workers, claim applications received last year are as low as 5515, out of which only a select few got sanctioned. No claims have been disbursed by the Board since 12th October 2022 which is very disappointing.*

***Construction workers represent the most poor and marginalized section of our society. When they come to apply for claims they have to forego their wages for the day. But, it looks like our staff doesn't understand their pain at all, which is reflected in the increasing pendency of claim applications.***

*We fail to realize how much the amount of maternity, marriage, education etc. matter to the construction worker who are in urgent and dire need of financial assistance from DBOCWWB.* ***Engagement in over documentation and unnecessary delays in disposing claim applications defeats the purpose of setting up of DBOCWWB*** *under The Building and Other Construction Workers Act, 1996.*

*Despite SOP being formed of clearing claim applications within one month from the date of their receipt, applications are still pending for months and in some cases for years at almost all district offices. This kind of deliberate carelessness and lacklustre attitude towards government service by Board staff would not be tolerated.*

*Therefore, to correct the functioning of the Board, it is directed:*

*○ To submit a report on pendency of welfare claim applications in each district offices stating reasons why*

*SOP is being violated in the concerned districts.*
*○ To take action against the officials who are causing the delay in clearance of welfare claim applications of poor construction labourers.*
*○ Ensure clearance of all pending applications with Board as per SOP by 22nd January 2023."*

13. In the present petition, the only issue that has been raised by the Board is a legal issue relating to the alleged conflict between Rule 272 of the Rules and Section 14 of the Act i.e. the Petitioner was not registered for a period of three years, prior to attaining superannuation. On this issue, this Court has already rendered decision in ***Dulari Devi (supra).*** The relevant extract of the said decision 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."*

14. The Petitioner in the present case has been registered with the Board since August, 2011 and at the time of superannuation, he had worked as a building and other construction worker for more than one year and had paid his contribution for the entire period. The fact that the period of contribution extended beyond his retirement or that the renewal of membership was done after the age of superannuation cannot lead to the denial of pensionary benefits.

15. This Court takes note of the fact that a large number of construction workers are either illiterate or even semi-literate and hail from rural background. 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.

16. The Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011, entry 372 specifies 30 days as the period during which the pension application has to be processed. However, the SOP of the BOCW Board, stipulates disposal within 60 days. Thus, it is clear that once a pension benefit application is made by the construction worker, bearing in mind the financial status of such workers, the said application ought to be processed

without any delay.

17. 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.

18. The Court notes that in the recent decision of the ld. Division Bench of this Court dated 17th April, 2023 in ***LPA 209/2023*** titled ***Rajo v. Delhi Building and Other Construction Workers Welfare Board & Anr.***, it has been directed that interest would be liable to be paid upon the expiry of a period of 45 days after all the deficiencies are cleared at the rate of 6%. The relevant observations of the ld. Division Bench's order are set out below:

> *"12. As regards the alleged delay on the part of the respondent no.1 in processing the appellant's application for pension, it is pertinent to note that even though the appellant completed sixty years of age/superannuated on 01.01.2021, she submitted the application for sanction of pension only on 08.02.2022 i.e. more than 13 months after attaining the requisite age. It is also a matter of record, as noticed in the impugned judgment that the respondent no. 1 vide its letter dated 06.07.2022 pointed out certain deficiencies in the said pension application. The communication expressly referred to the fact that the labour card of the appellant was valid only till 13.12.2020. The said communication also requested the appellant to appear before the concerned Deputy Secretary (District-South), Delhi and provide necessary clarifications. This communication was responded to by the appellant on 05.08.2022. Thereafter, the respondent no. 1 sanctioned the pension on 06.01.2023. As rightly observed in the impugned judgment, it was only after the requisite information was provided by the appellant on 05.08.2022, that the appellant's application for*

*<u>grant of pension could be processed</u>. <u>In view of the sequence of events and the factual position as emerges from the record, it cannot be said that the impugned judgment has incorrectly computed the period for which interest has been held to be payable.</u>*

*13. **<u>The impugned judgment, taking into the account that the relevant rules do not provide any timeline within which an application for pension is to be processed, proceeded on the basis that the period of 45 days can be taken as a reasonable period for the respondent no.1 board to process the appellant's application for grant of pension.</u>** On that premise, the appellant has been granted interest @ 6% per annum on the delayed amount of pension w.e.f. 21.09.2022 (after excluding 45 days w.e.f. 05.08.2022). No fault can be found with the directions contained in the impugned judgment which are based on the peculiar facts and circumstances of the present case."*

19. Under these circumstances and keeping in mind the overall objective of the BOCW Act, Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011 and also the order in ***Rajo (supra)***, it is directed that the applicable pension to the Petitioner shall be disbursed with interest at the rate of 6% w.e.f. 29th April, 2017. The applicable pension as also the interest to be remitted by the Board to the Petitioner by 1st July, 2023.

20. Considering the nature of this case, the long delay and multiple proceedings, costs of Rs. 10,000/- are awarded to the Petitioner. The said costs shall be paid by the Board to the Petitioner within eight weeks.

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

22. It is made clear that the costs and payment of pension as also applicable interest shall be subject to the outcome of the appeal of the Board

in, ***LPA 372/2023*** titled ***Delhi Building and other Construction Workers Board v. Dulari Devi & Anr***.

**PRATHIBA M. SINGH**
**JUDGE**

**MAY 29, 2023**
*Rahul/AM*
*(corrected & released on 12th June, 2023)*