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

Date of Decision:- 29th May, 2023.

\+ **W.P.(C) 16531/2022**

SALMA ..... Petitioner

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

versus

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

Through: Mr. Abhay Dixit and Mr. Ankit Kumar, Advocates for R-1.
Ms Avni Singh, Advocate for GNCTD.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner is the widow of Late Sh. Riyasat Ali who was a construction worker and who passed away on 25th August, 2019. The prayer in the present petition is for the issuance of a direction to the Delhi Building and Other Construction Workers Welfare Board (*hereinafter 'the Board'*) for releasing the death and funeral benefits applicable under Rule 277-279 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (*hereinafter 'the Rules'*) as also Maternity benefit under Rule 271 of the Rules.

3. The case of the Petitioner is that the applications have been filed way back in 2018 for payment of maternity benefit and in 2019 upon the demise of her husband for payment of death benefit and funeral assistance. However, the case of the Petitioner is that both claims have not been processed and granted by the Respondent.

4. Vide order dated 1st December, 2022, ld. Counsel for the Respondents were directed to seek instructions and process the claims which were not processed as also release payments in accordance with law. The relevant extract of the said order is extracted as under:

> *"6. Ld. counsel appearing for the Respondent submits that he will seek instructions, both in respect of principal claims as also the interest and file the status report by the next date of hearing.*
> *7. List on 15th February, 2023.*
> *8. It is directed that if the claims have not been processed, the same shall be processed and payments shall be released in accordance with law by the next date of hearing."*

5. On 15th December, 2022, ld. Counsel for the Respondents submitted that the claims of the Petitioner were processed and orders would be placed on record for the same.

6. A counter affidavit dated 28th February, 2023 has been filed by the Respondent No. 1- Board. In the said counter affidavit, a copy of the sanction order dated 6th February, 2023 for death and funeral benefits has been annexed. With regards to the claim for maternity benefits, it has been stated that a deficiency letter dated 29th December, 2022 has been issued by the Board to the Petitioner. In addition, the counter affidavit records that the Board were short-staffed as most of them were engaged in the MCD Elections, which is why there has been a delay in processing of the claims. However, it is also claimed that the Petitioner has fulfilled the essential requirement of live photography only on 19th January, 2023.

7. In the rejoinder to the Counter Affidavit, the Petitioner claims that the officials of the Board were not allowing her to submit the claim for death

and funeral benefits. It has been averred that she had to run pillar to post since 25th August, 2019, for the same. The relevant extract of the Rejoinder is extracted as under:

> *"5. The contents of para no. 4 need no reply. However, it is pertinent to note that the Petitioner had been running from pillar to post eversince 25.08.2019 for filing the claim applications under Rule 277-279. Due to writ-large arbitrariness on part of Respondent No. I's officials, the same was not being allowed to be filed. The Petitioner was constrained to engage a legal counsel in 2022 for filing her claim applications. On 05.08.2022, the Petitioner had to make a representation to the Respondent No. 1's secretary through her legal counsel. Only after the said representation was made, the Respondent No. 1's officials allowed the filing of the claim applications. Yet, the sanction order for death and funeral assistance was issued by the Respondent No. I only on 06.02.2023 with a significant delay of almost five months. ..."*

8. The Court has perused the record and heard ld. Counsels.

9. The present petition raises two issues. One of death and funeral benefits and another of maternity claims. Insofar as the death and funeral benefit is concerned, the same has been released on 6th February, 2020 after a delay of about five months. The explanation given by the Respondent is that there were MCD elections. The said explanation is accepted.

10. Insofar as the maternity benefits are concerned, the rejection is on the ground of a deficiency letter which was issued on 29th December, 2022 seeking certain documents and raising an issue that the Petitioner was not a live member of the Board at the time when the child was born and rejection letter was issued on 6th February, 2023.

11. This Court, in ***Dulari Devi v. Delhi Building and Other Construction***

Workers Board & Anr., 2023/DHC/001341 has held that when a worker has deposited their contribution to the fund under Rule 267 of the Rules and the same has been accepted by the Board, the membership of the beneficiary is deemed to have been resumed/renewed. The relevant extract of the said judgement is extracted as under:

> *"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:*
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> > *"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.*
>
> *xxxx xxxx xxxx*
>
> *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."*

12. In view of the interpretation given in the ***Dulari Devi (supra)***, let the maternity benefits be also processed and issued by 1st July. 2023. It is made clear that the same shall be subject to the outcome of the appeal in ***LPA 372/2023*** titled ***Delhi Building and other Construction Workers Board v. Dulari Devi & Anr***.

13. Insofar as the deficiency with respect to submission of old labour registration card of Late Sh. Riyasat Ali is concerned, this Court clarifies that in view of the renewal of registration of the husband of the Petitioner through online mode, this deficiency is waived. The said renewal till 4th March, 2020 has been placed on record, bearing the photograph of the beneficiary as also a QR code confirming the same. The Court notes the

submission of the ld. Counsel for the Petitioner that the old labour card was submitted to the Board at the time of online renewal in February, 2020. However, the verification of the same is not needed, on account of the registration card placed on record.

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

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

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

15. Accordingly, in view of the fact that the rejoinder affidavit dated 6th April, 2023, with the vaccination card of the child of the Petitioner has been served to the Respondent Board on 13th April, 2023, simple interest at the rate of 6% per annum, shall be paid on amount of maternity benefit, w.e.f. 28th May, 2023.

16. It is made clear that if all benefits due to the Petitioner are not sanctioned and transferred to the Petitioner by 1st July, 2023, simple interest at the rate of 6% per annum shall be applicable from 16th August, 2022, i.e., 45 days after the representation of the Petitioner for all benefits.

17. The petition is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

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