



2024:DHC:7309



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 17.09.2024***+ **W.P.(C) 5923/2023**
RAM KISHAN

.....Petitioner

Through: Mr. Chirayu Jain, Adv. with Mr.
Arvind Rawal, Adv.

versus

**DELHI BUILDING AND OTHER CONSTRUCTION
WORKERS WELFARE BOARD**

.....Respondent

Through: Mr. Abhay Dixit, Adv. with Mr.
Akhilesh Dixit, Adv.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner seeking an appropriate direction to be issued, directing the Respondent/Board to restore the Petitioner's registration under the provisions of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 [hereinafter referred to as "the BOCW Act"], in order to enable the sanction of the pension application filed by the Petitioner, under Section 22(1)(b) of the BOCW Act. The Petitioner also prays for penal interest at the rate of 18% per annum on the pension arrears and the release of pension in accordance with Rule 272-273 of the Delhi Building and Other Construction Workers Rules, 2002 [hereinafter referred to as the "DBOCW Rules"].

2. The brief facts are that the Petitioner has worked as a 'raj mistri' in Delhi for many decades. The Petitioner got himself registered as a



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beneficiary under the BOCW Act on 25.08.2017 and renewed his membership upto 25.08.2018 by paying his annual renewal fee. Thereafter, the Petitioner made multiple attempts to renew his registration between the year 2018 to 2020, however, despite repeated attempts, he was unsuccessful. Amongst the reasons for this as contended by the Petitioner, was that the staff of the Respondent/Board went on an eight-month strike in 2018 due to which lakhs of building workers lost their registration status, including the Petitioner. It was only after the Respondent/Board put in a Standard Operating Procedure [hereinafter referred to as “SoP”] for online registration on 14.05.2020, that the Petitioner was able to file his application for renewal, which was completed by him on 11.06.2020.

3. Learned Counsel for the Petitioner contends that when the Petitioner was finally called for verification of documents in December 2020, he was told that his registration could not be renewed as he had already crossed the age of superannuation on 18.02.2020. This led to the non-release of the pension of the Petitioner.

4. Thereafter, the Petitioner filed an application under Section 17 of the BOCW Act on 05.04.2021 [hereinafter referred to as “the Application”] through his Counsel, for restoration of his registration from 25.08.2019 to 18.02.2020 and release of his pension dues. It is stated by the Petitioner that during the pendency of the Application, Petitioner made several representations to the Respondent/Board that his application for restoration be taken up for consideration. It is contended that after receiving the Petitioner’s application on 05.04.2021, more than nine hearings have taken place and yet the application for restoration of



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the membership of the Petitioner was not finalised. The Petitioner complied with the directions issued by the Respondent/Board from time to time, however, the last proceeding took place on 20.05.2022 after which neither did any hearing take place nor was any order issued by the Respondent/Board. Aggrieved by this, the present Petition was filed.

5. During the pendency of the present Petition, by an order dated 06.07.2023, the Application of the Petitioner was rejected by the Respondent/Board. This Court by its order dated 13.09.2023 permitted the Petitioner to amend its Petition, to challenge the order dated 06.07.2023 passed by the Respondent/Board, in addition to the reliefs claimed.

6. Learned Counsel for the Petitioner seeks to rely upon a judgment passed by a Coordinate Bench of this Court in ***Geeta v. Delhi Building and Other Construction Workers Board***¹ to submit that the issue which is raised in the present case was raised in the said case and that in similar circumstances, this Court allowed the Application filed under Section 17 of the BOCW Act and had set aside the order of the Respondent/Board. Learned Counsel for the Petitioner further submits that the judgment in the ***Geeta*** case was upheld by a Division Bench of this Court in ***Delhi Building and Other Construction Workers Welfare Board v. Geeta***². Reliance is placed on the following paragraphs of the judgment passed by the Division Bench in the ***Delhi Building*** case:

“8. Having heard learned counsel for the appellant, this Court is of the opinion that the present matter involves the interpretation of Section 17 of the Act. The said Section is reproduced hereinbelow:-

¹ 2023 SCC OnLine Del 7622

² 2024 SCC OnLine Del 2201



“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.”

9. This Court is of the view that Section 17 of the Act stipulates that a worker shall cease to be a beneficiary if he has not paid contribution for a continuous period of not less than one year. Proviso thereto provides that Secretary of the Board is empowered to restore the registration. A plain reading of the provision suggests that no limitation has been prescribed for renewal of membership. Therefore, the contention that the Secretary of the Board cannot renew registration as it has lapsed three years and one month ago is untenable.

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12. Further, this Court takes judicial notice of the fact that the registrations under the Act had gone down from around 5 lakhs to a few thousands due to the administrative hurdles faced by the beneficiaries for renewal of their membership during the period 2018-2020.

13. Therefore, the assertion that the respondent's husband could not renew his membership due to reasons beyond his control is plausible and the respondent/her husband cannot be held liable for non-renewal of membership.”

7. Learned Counsel for the Petitioner has further submitted that the fact that there was a shortage of manpower with the recruitment Board cannot be disputed as has been done by the order dated 06.07.2023 passed by the Respondent/Board. In support of this contention, learned Counsel for the Petitioner relied on the orders and judgments passed by the Coordinate Benches of this Court as set out below.

7.1. A Coordinate Bench of this Court in a matter titled as **Kali**



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Charan v. State (Govt of NCT of Delhi)³ had observed that there is huge shortage of manpower and there is need of immediate recruitment in the Respondent/Board. The Court after noting that there were only two permanent staff members, and the remaining persons are on contract basis, thus, directed the Government of NCT of Delhi to expedite the process of recruitment for the Respondent/Board. The Respondent/Board thereafter addressed a communication to the Secretary (Services), Services Department, Government of NCT of Delhi dated 02.09.2019 wherein it was stated that as on 22.08.2019, total 31,546 construction workers have applied for registration and renewal. However, only 14,904 applications were approved while 16,505 were pending approval. The relevant extract is below:

“Now in the Board, w.e.f. 16/11/2018, the Registration and Renewal process has been carried out through e-district online portal (NIC). As on 22/08/2019, total 31,546 construction workers have applied for registration and renewal. However, only 14,904 applications were approved by the Dy. Secretaries and 16,505 applications are pending for their approval.”

7.2 In addition, reliance has been placed on order passed by this Court in a matter titled as **Sunil Kumar Aledia v. Govt. of NCT of Delhi & Ors.**⁴ wherein a Division Bench of this Court passed directions to carry out the verification of the renewal applications without any delay. It was submitted that it was only pursuant to these orders that the registration process of the Respondent/Board was streamlined by adding mechanisms such as recommencement of renewal process including *via* online methods.

³ Orders dated 03.11.2017 and 13.07.2018 in CRL. M.C. 5889/2014

⁴ Order dated 20.05.2020 in W.P.(C)2991/2020



8. Learned Counsel for the Petitioner further submits that the contentions raised by the Respondent/Board before this Court were neither raised before the Respondent/Board nor was any finding in respect thereof given.

9. Learned Counsel for the Respondent/Board, on the other hand has made two submissions. He contends that in the first instance, no document has been filed showing that any attempt has been made by the Petitioner to renew his registration. Reliance has been placed on para 6 of his Counter Affidavit which reads as follows:

“6. That the applicant, despite making the aforementioned claims, has failed to produce any documentary evidence or proof to authenticate his efforts to renew the membership during the said period.”

He further submits that in the **Geeta** case, the workman had paid contributions for a period of seven years, which fact does not obtain in this case, as the Petitioner, was only a registered beneficiary for one year.

9.1 Secondly, it is contended that the Petitioner had filed his application on 11.06.2020, which was lodged post his reaching the age of 60 years on 18.02.2020, and that since he was not a registered member of the Respondent/Board at the time of his superannuation, he was not qualified under Section 14 of the BOCW Act.

10. The BOCW Act is a social welfare measure enacted for the benefit of unorganized labour in India where jobs are temporary and working hours are uncertain. The basic amenities and welfare facilities provided to these workers are inadequate. The work is characterized by its casual nature, temporary relationship between employer and employee,



uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. It was enacted keeping in mind the socio-economic realities of the intended beneficiaries - the construction workers - aiming to tackle both administrative and bureaucratic hurdles faced by them on account of lack of knowledge and lack of access to professional resources.

10.1 The intention of the legislature was not to punish or deprive the worker who failed to renew his/her registration but to provide a remedy to enable the worker to overcome the difficulties caused by non-renewal. Section 17 of the BOCW Act is one such remedial provision. The proviso to Section 17 of the BOCW Act states that where there are reasonable grounds for non-payment and the worker deposits the arrears, the delay can be condoned and the registration restored. It 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.”

11. It is no longer res integra that a beneficial legislation must be construed liberally and interpreted in a manner that advances its purpose so as to fructify the legislative intent. The Supreme Court in **Transport Corpn. of India v. ESI Corpn. And Anr.**⁵ held that a beneficial

⁵ (2000) 1 SCC 332



legislation must be construed in a correct perspective and where two views are possible on its applicability, a view which furthers the legislative intention should be preferred. The relevant extract is reproduced below:

“27. Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view which furthers the legislative intention should be preferred to the one which would frustrate it. It is difficult to appreciate how it could be contended by the appellant with any emphasis that an employee working at its head office in Secunderabad would be governed by the beneficial sweep of the Act as admittedly the head office employees are covered by the Act, but once such an employee, whether working on the administrative side or connected with the actual transportation of goods, if transferred to the Bombay branch even with his consent, cannot be governed by the beneficial provisions of the Act...”

[Emphasis supplied]

12. In ***Builders Association of India v. Union of India (UOI) and Anr.***⁶, 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

⁶ 2007 SCC OnLine Del 327 : ILR (2007) 1 Del 1143



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] 2 SCR 67 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."

[Emphasis supplied]

12.1 It was further held that the interpretation of the provisions of the BOCW Act should be in a manner to benefit the welfare of building and other construction workers, and any contrary interpretation would have to be avoided.

13. The facts in the present case are that the Petitioner was a building worker within the meaning of Section 2(e) of the BOCW Act who registered himself as a beneficiary under Section 2(b) of the BOCW Act. After obtaining the registration under the BOCW Act, the Petitioner



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renewed his registration once and thereafter was unable to renew the registration. On several occasions after 2018, he attempted to file his renewal application. It is contended that although multiple attempts were made by the Petitioner to renew his registration, he was unable to do so in view of the administrative and other hurdles.

13.1. Although, the renewal application was finally filed by the Petitioner on 11.06.2020, upon verification, it was found that the Petitioner had superannuated, so his application for renewal of the registration was rejected. The application filed by the Petitioner under Section 17 of the BOCW Act also met the same fate, being rejected by the Respondent/Board on 06.07.2023. It is in this backdrop that the Petitioner approached this Court seeking setting aside of the orders of rejections of renewal and restoration of the registration of the Petitioner.

14. In response to the contention of the Respondent/Board that there is no proof that any attempts were made by the Petitioner to renew his registration after the year 2018, learned Counsel for the Petitioner has contended that the fact that there was a shortage of staff in offices of the Respondent/Board has been affirmed in terms of the orders passed in the ***Kali Charan*** case and ***Sunil Kumar Aledia*** case. The Petitioner also relies upon a communication dated 02.09.2019 sent by the Respondent/Board to the Secretary (Services), Services Department, Govt. of NCT of Delhi [hereinafter referred to as “2019 communication”]. The content of this communication clearly highlights the shortage of staff, difficulties and backlog in the registration process. It is apposite to extract the relevant portion of this letter which is set out below:



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“ Due to the shortage of Officers, as per Rule 263(2) (ii) of DBOCW (RE&CS) Rules, 2002 (copy enclosed) and also, in view of the court case titled Kali Charan V/s Govt. Of NCT of Delhi, the DBOCW Board has resolved in its 35th Board Meeting on 18.09.2018 to request the Services Department to provide few officers as Deputy Secretaries in the Board for its efficient functioning until the recruitment of regular staffs are made.

Also the Board has created 130 posts of various categories and the Recruitment Rules (RRs) have been prepared and submitted on 18.04.2019 to the Services Department for finalizing the same and it is still under process in the Services Department

Now in the Board, w.e.f. 16/11/2018, the Registration and Renewal process has been carried out through e-district online portal (NIC). As on 22/08/2019, total 31,546 construction workers have applied for registration and renewal. However, only 14,904 applications were approved by the Dy. Secretaries and 16,505 applications are pending for their approval....”

15. A Division Bench of this Court in the **Delhi Building** case also took judicial notice of the fact that the registration under the BOCW Act had gone down from 5 lakhs to a few thousands due to the administrative hurdles faced by beneficiaries for renewal of their membership during the period of 2018-2020. It was held by this Court that the denial of benefits by the Respondent/Board on the ground that the workman failed to renew his registration after the validity has come to an end would not be the correct interpretation of Section 17 of the BOCW Act.

16. This Court has recently in **Man Kunwar Vs. Delhi Building And Other Construction Workers Board**⁷ held that the BOCW Act is a social welfare measure enacted for the benefit of unorganized labour in India and its intent needs to be given effect to. It was held that the Petitioner in order to renew his membership was unable to do so due to reasons

⁷ 2024 SCC OnLine Del 5705



beyond his control is certainly plausible and evidenced from the orders passed by this Court which constituted a reasonable ground under the proviso to Section 17 of the BOCW Act. The relevant extract of the *Man Kunwar* case is set out below:

*“15. As stated above, the BOCW Act is a beneficial legislation and its intent needs to be given effect to. **The Petitioner has placed on record the orders and judgments of this Court to show that the circumstances which existed with the Respondent/Board during the period from 2018 to 2020, were such that lakhs of similarly placed such workers were denied registrations/renewals.***

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*17. **There is a clear admission by the Respondent/Board in the 2019 communication of the problems of shortage of staff in the Board and of delay in the registration process.** The assertion of the Petitioner that her husband despite his best efforts was unable to renew his membership during the period from 2018 to 2021, due to reasons beyond his control is certainly plausible and is evidenced by the orders passed by this Court from time to time. **This would constitute a reasonable ground under the proviso to Section 17 of the BOCW Act and any other interpretation would not be in accordance with its legislative intent.**”*

[Emphasis supplied]

17. As stated above, the BOCW Act is a beneficial legislation and its intent needs to be given effect to. The Petitioner has placed on record the orders and judgments of this Court to show that the circumstances which existed with the Respondent/Board during the period from 2018 to 2020, were such that lakhs of similarly placed such workers were denied registrations/renewals.

18. The objection taken by the Respondent/Board that the Petitioner would only be entitled to benefits for one year from the date of registration is without merit. A Division Bench of this Court in *National*



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Campaign Committee for Central Legislation on Construction Labour v. Delhi Building and Other Construction Workers Board⁸ has held that workers shall continue to be entitled to benefits under the BOCW Act for a period of one year from the date he/she is liable to pay fresh contribution as per Section 16 of the BOCW Act. Thus, the registration of the Petitioner's husband would continue to be valid for a period of one year i.e., upto 25.08.2019 when the renewal became due.

19. This Court agrees with the contentions of the Petitioner that there are plausible reasons for workers such as the Petitioner not being able to renew its membership. As stated above, there is sufficient evidence in the form of communication and orders passed by this Court which are set out in paragraph 7 herein to show that the functioning of the Respondent/Board was impeded. The record shows that after the application for restoration was filed by the Petitioner, several hearings took place and the Petitioner complied with each of the Respondent/Board's request that was asked of him including for filing of submissions as well as providing documents. Undisputably, all these requirements were met by the Petitioner.

19.1 The proviso to Section 17 of the BOCW Act states that where there are reasonable grounds for non-payment, the delay can be condoned. The assertion of the Petitioner that despite his best efforts he was unable to renew his membership during the period from 2018 to 2020, due to reasons beyond his control is certainly plausible and evidenced from the orders passed by this Court from time to time. This would constitute a reasonable ground under the proviso to Section 17 of

⁸ 2024 SCC OnLine Del 1257



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the BOCW Act and any other interpretation would lead to an interpretation of the provisions of the BOCW Act which is not in accordance with its legislative intent.

20. In view of the foregoing discussion, this Court finds it a fit case to exercise its jurisdiction under Article 226 of the Constitution of India, to allow the claim made by the Petitioner for benefits under the BOCW Act. The Petitioner shall deposit the arrears in contribution due within two weeks. Subject to deposit and completion of any requisite formalities, the Respondent/Board shall renew the registration within four weeks thereafter.

21. The Petition is disposed of with the aforesaid directions.

TARA VITASTA GANJU, J

SEPTEMBER 17, 2024/SA

Click here to check corrigendum, if any