



2024:DHC:6622



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

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Date of Order: 28.08.2024+ **W.P.(C) 11853/2024**

HARI RAM

.....Petitioner

Through: Mr. Chirayu Jain, Adv.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
BOARD

.....Respondent

Through: Mr. Abhay Dixit, Adv.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (ORAL)****CM Appl.49324/2024/Exemption from filing typed copies]**

1. Allowed, subject to the Petitioner filing typed copies of dim annexures within a period of four weeks.
2. The Application stands disposed of.

W.P.(C) 11853/2024

3. The present Petition has been filed on behalf of the Petitioner *inter-alia* seeking the following prayers:

“a) Direct the Respondent Board to restore registration of the Petitioner till 01.01.2020 and to sanction the pension and release the dues of the Petitioner with 12 per cent per annum from 01.02.2020 onwards;”

4. Issue Notice. Learned Counsel for the Respondent accepts Notice. With the consent of the parties, the matter is taken up for hearing and disposal today itself.
5. The grievance of the Petitioner as articulated in the present Petition is that the Petitioner was a building worker registered under the Building and



Other Construction Workers Act, 1996 [hereinafter referred to as “the BOCW Act”] with effect from 07.11.2014. It is contended that the Petitioner superannuated on 01.01.2022 and thus became eligible to receive pension. The Petitioner is aggrieved by the non-sanction of his pension under the BOCW Act.

6. Learned Counsel for the Petitioner seeks to rely on a judgment of a Coordinate Bench of this Court in ***Geeta v. Delhi Building and Other Construction Workers Board***¹ (which was upheld by a Division Bench by order dated 19.03.2024 in LPA No. 228/2024 in the matter of ***Delhi Building and Other Construction Workers Welfare Board v. Geeta***²). He further submits that the decision in the present matter is covered by a judgment passed by this Court in W.P.(C)16525/2023 titled ***Man Kunwar v. Delhi Building and Other Construction Workers Board***³.

7. This Court in the ***Man Kunwar*** case while relying upon these judgments, had allowed an Application filed under the BOCW Act and had set aside the order of the Respondent/Board in the following terms:

“9. 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 basis 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 socioeconomic 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.

¹ 2023 SCC Online Del 7622

² 2024 SCC OnLine Del 2201

³ 2024 SCC OnLine Del 5705



9.1 The intention of the legislature was not to punish or deprive the worker to 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 thus 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.”

10. 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.**⁴ held that a beneficial 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

⁴ (2000) 1 SCC 332



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]

11. In *Builders Association of India and Ors v. Union of India (UOI) and Ors.*⁵, 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] 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."

⁵ 2007 SCC OnLine Del 327



[Emphasis supplied]

It was further held that the interpretation of the provisions of the Act should be towards the welfare of building and other construction workers, and any contrary interpretation would have to be avoided.

12. The facts in the present case are that the Petitioner's husband was 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 husband of the Petitioner was unable to renew his registration. On several occasions after 2017, he attempted to file his renewal application. It is contended that although multiple attempts were made by the Petitioner's husband to renew his registration, he was unable to do so in view of the administrative and other hurdles, either the office of the Respondent/Board was shut down or there were long queues with touts restricting the entry of workers not willing to pay bribes. Hence, the Petitioner's husband was unable to submit his application for renewal.

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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.

*16. 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 Campaign Committee for Central Legislation on Construction Labour v. Delhi Building and Other Construction Workers Board**⁶ 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 from the year 2018.*

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

⁶ 2024 SCC OnLine Del 1257



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 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 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 legitimate intent.”

[Emphasis supplied]

8. Learned Counsel for the Respondent, who appears on advance service, submits that this Petition is required to be allowed in terms of a judgment passed by a Division Bench of this Court in LPA No. 372/2023 titled ***Delhi Building and Other Construction Workers Welfare Board v. Dulari Devi and Anr.***⁷ He seeks to rely upon paragraph 19, 20 and 21 of the said judgment which are extracted below:

“19. The eligibility criteria concerning pensions are expressly provided in Rule 272 of BOCW Rules. The said provision, in no uncertain terms, states that a member of the fund who is a building worker would be eligible for a pension on reaching 60 years of age if he has worked for a period of not less than one year.

20. To our minds, there is no provision in the BOCW Act which provides for a qualifying period, i.e., an eligibility period for availing pension by a building worker. The only provision concerning qualifying period/eligibility criteria, as noted above, is found in Rule 272. Although Shri Gauri Shankar Gupta had asserted that he had been working as a building worker in Delhi for several decades before his registration with the Welfare Board on 17.12.2007, even if it is assumed that he commenced his work from the said date, he would have met the minimum eligibility criteria of one year provide in Rule 272 before the date when he completed the age of 60 years.

21. As noted above, it is not in dispute that Shri Gauri Shankar Gupta turned 60 on 01.01.2009, at which point he had already worked as a building worker for more than one (01) year.”

⁷ 2024:DHC:3436-DB



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9. Learned Counsel for the Respondent submits that it is not in dispute that when the Petitioner in the present case had attained the age of 60 years on 01.01.2020, he had already worked as a building worker for more than one year.

10. In view of the foregoing and since both parties are relying on the judgment of the Division Bench in the *Dulari Devi* case, this Court finds it a fit case to exercise its jurisdiction to allow the claim made by the Petitioner for his pension under the BOCW Act.

11. Accordingly, the Respondent is directed to restore the registration of the Petitioner till 01.01.2020 (if not already restored) and release the pension dues of the Petitioner within a period of six weeks.

12. The Petition is disposed of in the foregoing terms.

13. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 28, 2024/r

Click here to check corrigendum, if any