



2024:DHC:6101



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

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Date of Decision: 14.08.2024+ **W.P.(C) 16525/2023**

MAN KUNWAR

.....Petitioner

Through: Mr.Chirayu Jain and
Mr.RudrakshiDeo, Advocates

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
BOARD

.....Respondent

Through: Mr. Akhilesh Dixit, Mr. Abhay
Dixit Ms.Reenu Kapoor and
Mr. Naresh Tyagi, Advocates**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.**

1. The present Petition has been filed by the Petitioner seeking an appropriate direction to be issued, directing the Respondent/Board to restore the registration of the Petitioner's husband under the provisions of Building and Other Construction Workers Act, 1996 [hereinafter referred to as "the BOCW Act"], in order to enable the sanction of the pension application filed by the Petitioner's husband, under Section 22(1)(b) of the BOCW Act. The Petition also prays for penal interest at the rate of 18% per annum on the pension arrears and the release of the family pension in accordance with Rule 283 of the Delhi Building and Other Construction Workers Rules, 2002 [hereinafter referred to as "the Rules"].

2. The brief facts are that the Petitioner is the wife of one Mr.



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Chhakodi who worked as a 'Beldar'. The husband of the Petitioner was a duly registered as a beneficiary under the BOCW Act on 24.04.2016 after paying his annual contribution. It is the case of the Petitioner that the Petitioner's husband was a beneficiary under the BOCW Act until 23.04.2018. However, post 2018, due to an extreme shortage of staff in the Respondent/Board, a number of workers like the Petitioner's husband could not get their registration renewed which has led to the non-release of the pension of the Petitioner's husband.

3. Learned Counsel for the Petitioner submits that during the period of 2018-2020, the offices of the Respondent/Board were grossly understaffed and thus, the Petitioners' husband was not able to renew his registration. It is further contended that in the year 2019, nearly 4.5 lakh registered workers who were registered as beneficiaries under the BOCW Act till 2018, lost their registrations as the renewals were extremely slow. The Petitioner's husband continued to work as 'Beldar' and made multiple attempts to renew his registration between the years 2017-19. However, each time when he went to the district office of Respondent/Board, either the office was shut down or there were extremely long queues with touts and officials restricting entry of workers who were not willing to pay bribes. It was only after the Respondent/Board put in a Standard Operating Procedure [hereinafter referred to as "SoP"] for online registration, that the Petitioner's husband was able to file his application for renewal which was filed by him on 25.08.2020.



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3.1 Learned Counsel for the Petitioner contends that when the Petitioner's husband 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.

4. Thereafter, the Petitioner's husband filed an application under Section 17 of the BOCW Act on 08.04.2021 through his Counsel, for restoration of his registration. It is stated by the Petitioner that during the pendency of the Application, Petitioner and her husband made several representations to the Respondent/Board that her husband's application for restoration be taken up for consideration. However, the Application was not taken up for hearing and on 08.09.2021, the Petitioner's husband passed away. This led to the filing of the present Petition.

5. During the pendency of the Petition, by an order dated 01.09.2023, the Application of the Petitioner under Section 17 of the BOCW Act was rejected by the Respondent/Board. This Court by its order dated 19.07.2024 permitted the Petitioner to amend its Petition, to challenge the order dated 01.09.2023 passed by the Respondent/Board, in addition to the relief already claimed in the present Petition.

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

¹2023 SCC OnLine Del 7622



that the issue which is raised in this 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:-

“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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² 2024 SCC OnLine Del 2201



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 01.09.2023 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 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 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

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



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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.

8. Learned Counsel for the Respondent/Board, on the other hand, has made two submissions. He contends that in the first instance, the judgment in the ***Geeta*** case can be distinguished on facts. He 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 husband of the Petitioner, was only a registered beneficiary for one year. Secondly, it is contended that the Respondent/Board is in the process of preparing to file an Appeal before the Supreme Court against the judgment dated 19.03.2024 passed by the Division Bench of this Court in the ***Delhi Building*** case. On a query put to the learned

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



counsel for Respondent/Board, it was clarified that as on date, no Appeal has been filed, however, they propose to file the same.

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 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 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.

9.1 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 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.***⁵ 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 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...”

⁵ (2000) 1 SCC 332



[Emphasis supplied]

11. In *Builders Association of India and Ors v. Union of India (UOI) and Ors.*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 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]2SCR67 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

⁶(2007) ILR 1 Delhi 1143



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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]

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 could not submit his application for renewal.

12.1 Although, the renewal application was finally filed by the Petitioner’s husband on 25.08.2020, upon verification, it was found that the Petitioner’s husband had superannuated, so his application for renewal of the registration was rejected. The application filed by the Petitioner’s husband under Section 17 of the BOCW Act also met the



same fate, being rejected by the Respondent/Board on 01.09.2023. The Petitioner's husband then passed away and the application for pension benefits of the Petitioner's husband was also rejected in view of the fact this his registration as a beneficiary under the BOCW Act did not subsist. It is in this backdrop that the Petitioner approached this Court seeking setting aside of the orders of rejections of renewal of the registration of the Petitioner's husband.

13. The shortage of available manpower in 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"] which evidences the same. This communication clearly highlights the shortage of staff, and difficulties and backlog in the registration process. It is apposite to extract the relevant portion of this letter which is set out below:

" 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



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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....”

14. 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 2018-2020. It was held 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.

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*⁷ 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 after 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 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.

18. 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, the widow of the workman claiming benefits under the BOCW Act. The Petitioner shall deposit the arrears in contribution due on behalf of her deceased husband within two weeks. Subject to deposit and completion of any requisite formalities, the Respondent/Board shall renew the registration within four weeks thereafter. However, keeping in view that the Petitioner's husband registration did lapse, this Court does not

⁷2024 SCC OnLine Del 1257



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deem it fit, to grant any penal interest.

19. The Petition is disposed off with the aforesaid directions.

AUGUST14, 2024/r

TARA VITASTA GANJU, J

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