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

\+ W.P.(C) 12375/2024

SONBARSI DEVI .....Petitioner

Through: Mr. Chirayu Jain, Advocate.

versus

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

Through: Learned counsel for R-1 (appearance not given.)
Mr. Sameer Vashisht, ASC, Civic, GNCTD with Ms. Harshita Nathrani & Mr. Arjun Gupta, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

<u>O R D E R</u>

% **04.09.2024**

<u>CM APPL. 51476/2024 (exemption)</u>

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

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3. The petitioner, widow of late Sh. Raj Dev who was receiving pension under the provisions of 'The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996' [the Act] read with 'Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002' [the Rules], has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:-

> *"A. Quash Rule 283 of the Delhi Building and Other Construction Workers Rules, 2002 insofar as it stipulates that family pension*

application cannot be filed after three months of the death of the worker;

B. Quash and set aside the impugned letter/order passed by the Respondent No. 1 dated 08.07.2024;

C. Direct the Respondent No. 1 to release family pension under Rule 283 of the Delhi BOCW Rules, 2002 along with arrears and penal interest at 18% per annum to the nominee of the (Late) Mr. RajDev i.e., the Petitioner;

D. Pass order as to costs in favour of the Petitioner and against the Respondent No. 1"

4. Learned counsel for the petitioner submits that the petitioner has been compelled to approach this Court to assail the constitutionality of Rule 283 as the respondents are erroneously misinterpreting the said Rule to imply that in case an application in Form No. XLV along with the supporting documents is not submitted by the surviving spouse within three months from the date of the death of the pensioner, no family pension would be payable to the spouse. Based on this misinterpretation of the Rule, respondents have vide their order dated 08.07.2024 rejected the petitioner's claim for grant of family pension. He, therefore, prays that either the Rule be declared ultra vires or it be clarified that the said Rule does not create an absolute bar on an application, filed after three months from the date of death of the member, being entertained.

5. Learned counsel who appears on behalf of the respondent no. 1 on advance notice, fairly submits that the intent of the Rule 283 is not to debar claim for family pension by surviving spouse only on account of the application being submitted three months from the date of the death of the pensioner. The use of the word 'shall' in the Rule, he submits, is only to ensure that the application is filed in Form No. XLV and is submitted along

with all prescribed documents. He further contends that if the petitioner submits an application explaining the delay in submitting her application for grant of family pension, the respondent no. 1 will expeditiously reconsider her claim.

6. In light of this stand taken by the respondent no. 1 that there is no embargo in entertaining an application filed by a spouse after three months from the date of death of the pensioner, we are of the view that there is no reason to interfere with the Rule 283, which reads as under:-

> *"283. Family pension:- In the event of death of a pensioner, family pension shall be given to the surviving spouse. The amount of pension will be fifty per cent of the pension received by the pensioner or one thousand hundred rupees whichever is higher. An application in Form No. XLV shall be submitted with such documents as may be specified by the Board within three months from the date of the death of the pensioner:*
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> *Provided that the said benefit shall be extended only to those registered construction workers who have been registered with the Board for not less than one year."*

7. Further, we find that the petitioner's claim for family pension has been rejected vide the impugned order dated 08.07.2024 by holding that her application for family pension has been filed after three months from the date of the death of her husband could not be entertained, we have no other option but to set aside the said order and direct the respondent no. 1 to re-consider the petitioner's claim for family pension. The petitioner is however, directed to make, within two weeks, an application explaining the delay in approaching the respondent no. 1 for release of family pension. In case, such an application is filed by the petitioner, her prayer for grant of family pension will be re-considered by the respondents within a period of six weeks from the date of receipt of her application. Needless to state, if the petitioner is still aggrieved by any order passed by the respondent no. 1,

it will be open for her to seek legal recourse as permissible in law.

REKHA PALLI, J

SHALINDER KAUR, J

SEPTEMBER 4, 2024
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