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

\+ W.P.(C) 758/2024

KISHAN LAL .....Petitioner

Through: Ms. Rudrakshi Deo, Advocate

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE BOARD .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 02.05.2025

1. By way of the present petition, the petitioner seeks the following prayers :-

> *a. Issue a writ of Certiorari or any other appropriate writ order or direction in the nature of a writ setting aside/quashing the Impugned Rejection Order dated 17.11.2023 passed by the Respondent;*
> *b. Direct the Respondent Board to release the Pensionary dues of the Petitioner with penal interest @18% per annum;*
> *c. Direct the Respondent Board to initiate and conduct the inquiry against all the errant officers and employees, whether permanent or contractual, as under Delhi (Right to Citizens to Time Bound Delivery of Services) Act, 2011;*
> *d. Direct the Respondent to pay costs;"*

2. The facts, in brief, are that the petitioner was employed as a construction worker and was registered with the respondent on 10.11.2020. Thereafter, on 25.10.2021, the registration of the petitioner was renewed till 08.11.2022. It is the petitioner's case that upon superannuating on 31.12.2021, the petitioner became eligible for pension and accordingly, he submitted his application for pension on 15.06.2023.

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3. Vide the impugned rejection order dated 17.11.2023, the respondent rejected the claim of the petitioner for pension on the ground that the petitioner was not a continuous member of the Board/Organization for 03 years and hence, as per Section 14(2) of The Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereafter referred to as "BOCW Act"), he was not an eligible candidate for availing the pension related benefits.

4. The short issue which arises for consideration is whether the petitioner, a construction worker, was entitled to pension under the provisions of BOCW Act and the rules framed thereunder, i.e. The Delhi Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (hereafter referred to as "BOCW Rules") . Section 22 (1) (b) of the BOCW Act states that Board may make payment of pension to the beneficiaries who have completed the age of sixty years. Rule 272 of the BOCW Rules, 2002 talks of the eligibility for pension. It states that a member of the Fund who has been working as a building worker for not less than one year after the commencement of these Rules shall on completion of sixty years of age be eligible for pension. On the other hand, Section 14 deals with cessation as beneficiaries, with Section 14(1) laying down the situations wherein the status of beneficiary ceases to operate. Section 14(2) of the BOCW Act provides that notwithstanding Section 14(1), if a person has been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

5. A Co-ordinate Bench of this Court in <u>Dulari Devi v. Delhi Building</u>

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and Other Construction Workers Board & Anr[1], held that there is no conflict between Section 14 of the Act and Rule 272 as both pertain to different things. It was held that Section 14(2) merely carves out an exception for conditions of cessation enumerated in Section 14(1) and was an inclusionary provision, not an exclusionary one. It was held that eligibility for pension was determined by Rule 272. It held as follows:-

> *"44. Therefore, it is clear that Section 14 of the Act is not prescribing the eligibility for a worker being entitled to pension but it is providing for conditions when a beneficiary ceases to be a beneficiary. A reading of Sub-Section (2) of Section 14 of the Act makes it very clear that the eligibility for benefits would be 'as may be prescribed'. Further, Section 2(m) of the Act mandates that 'prescribing' shall be in terms of the Rules made under the Act. Thus, cessation of beneficiary status is governed by Section 14 of the Act and eligibility for pension is governed by Rule 272 of the Rules.*
> *45. Accordingly, there is no conflict between these two provisions as is being sought to be made out. Sub-Section (2) of Section 14 of the Act is merely an exception for the conditions of cessation as stipulated in Sub-Section (1) of Section 14 of the Act and nothing more. Any reading to the contrary would render either Sub-Section (2) of Section 14 of the Act as superfluous or Rule 272 of the Rules as otiose. Such interpretation would therefore have to be avoided. In fact, a reading of Sub-Section (2) of Section 14 of the Act makes it abundantly clear that it is merely an exception to Sub- Section (1) of Section 14 of the Act and is not prescribing eligibility conditions for exclusion of various benefits under the Act which are prescribed specifically and separately gua each of the benefits under the Rules."*

6. The abovementioned decision in Dulari Devi (Supra), was challenged by the respondent by way of LPA 372/2023. During the pendency of said LPA, Co-ordinate Benches of this Court in Muliya vs. Delhi Building and other Construction Workers Welfare Board[2], Sarla Devi v DBOCWWB[3], and in Munni Lal v DBOCWWB[4] also granted similar reliefs while relying on the decision in Dulari Devi (Supra).

7. The aforesaid issue has now been settled by a Division Bench of this Court in Delhi Building and Other Construction Workers Board v.

[1] decided on 23.02.2023 in W.P. (C) No. 13969/2022
[2] decided on 29.05.2023 in WP(C) No. 7612/2023
[3] decided on 01.11.2023 in WP(C) No. 14214/2023
[4] decided on 06.11.2023 in WP(C) No. 14404/2023

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Dulari Devi & Anr.[5], wherein the legal position regarding the rejection of a pension application on the ground that the worker was not registered for a continuous period of three years, as required under Section 14(2) of the Act was considered and clarified. The Court observed that:

> *"18. As is evident, the stipulated eligibility criteria of having been a beneficiary for at least three (03) years preceding the date when the beneficiary completes 60 years of age cannot apply to specific benefits which are the subject matter of Clauses (a) to (g) of Sub-Section (1) of Section 22. Pension is one such specific benefit, provided in Clause (b) of sub-Section (1) of Section 22, and cannot be controlled by the eligibility criteria provided in sub-Section (2) of Section 14.*
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> *18.1 In our opinion, the provision can only be construed as eligibility criteria for which power is vested in the Welfare Board under Clause (h) of Sub Section (1) of Section 22. This is a provision that confers power on the Welfare Board to make provisions and improvements of such other welfare measures and facilities which are not alluded to Clauses (a) to (g) of sub Section (1) of Section 22.*
>
> *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.*
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> *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...."*

8. Therefore, in light of the aforesaid decision, it is clear that 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 for

[5] LPA 372/2023 dated 01.05.2024

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payment of pension is found in Rule 272, which provides that a member of the Fund who has been working as a building worker for not less than one year after the commencement of these rules, shall on completion of sixty years, of age be eligible for pension. As noted above, it is not disputed that the petitioner turned 60 on 31.12.2021 and by that time, he had already worked as a construction worker for more than one year. Therefore, based on these facts, the petitioner is entitled for the benefit of pension.

9. In view of the present factual position and considering the import of the abovenoted decisions, the petition is allowed and the impugned rejection order is set aside. The respondent is directed to consider within six weeks, the petitioner's case for pension in terms of the directions issued in Dulari Devi (supra).

10. Accordingly, the present petition is disposed of.

MANOJ KUMAR OHRI, J

MAY 2, 2025

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