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

\+ W.P.(C) 10410/2025&CM APPL. 43255/2025

GOVIND SAHAY .....Petitioner

Through: Mr. Chirayu Jain, Adv.

versus

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

Through: Mr. Abhay Dixit, Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% **22.07.2025**

1. This hearing has been done through hybrid mode.

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

> *"a.Quash the impugned order dated 30.09.2024 passed by the Respondent; and*
> *b.Issue writ of mandamus directing the Respondent to sanction the pension application of the Petitioner under the Building and Other Construction Workers Act, 1996 with a direction to release the accrued arrears with 12% interest per annum from the date of accrual amounting to a total of Rs. 1,19,934/-* ***(ANNEXURE P-8)****; and*
> *c.Pass orders as to costs in favour of the Petitioner; and*
> *d.Pass any other order or grant any other relief as it may deem fit."*

3. The facts, in brief, are that the Petitioner is a building/construction worker who had registered with the Respondent Board with old registration No. 2110303966 and new registration No. 51380000057603. The Petitioner attained the age of 60 years and retired from the services on 02.09.2022 pursuant to which he applied for release of pension under Rule 273 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (hereafter referred to as "BOCW Rules").

4. The pension claim of the Petitioner was rejected by the Respondent board vide order dated 30.09.2024 for not fulfilling the eligibility conditions prescribed

under Section 14(2) of the Building and Other Construction Works Act, 1996 (hereafter referred to as "BOCW Act").

5. It is pertinent to mention that a co-ordinate Bench of this Court in Kishan Lal v. Delhi Building and Other Construction Workers Boards & Anr. [1] has observed that:

> *"4. The short issue which rises 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. 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.*
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> *5. A Co-ordinate Bench of this Court in Dulari Devi v. Delhi Building and Other Construction Workers Board & Anr , 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:-*
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> > *"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*

[1] decided on 02.05.2025 in W.P.(C) 758/2024

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 Board2 , Sarla Devi v DBOCWWB3, and in Munni Lal v DBOCWWB4 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.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.

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.

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

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)."

6. Accordingly, having regard to the said decision, it is evident that the BOCW Act has no provision which prescribes for a qualifying period for a building worker to avail pension. Rule 272 of the Act is the only provision that provides for a qualifying period as per which a member of the fund who had 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 a matter of record that the Petitioner attained the age of 60 years on 02.09.2022 and by that time, he had already worked as a construction worker for more than one year. Thus, in view of the foregoing facts, the petitioner is entitled for the benefit of pension.

7. In view of the above facts and circumstances, 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 passed by this Hon'ble Court in Dulari Devi (Supra).

8. Accordingly, the present petition is disposed of.

AMIT SHARMA, J

JULY 22, 2025