

(2023) 05 DEL CK 0371

In the Delhi High Court

Case No : Civil Writ Petition No. 12827, 12828 Of 2022, Civil Miscellaneous
Application No. 39007, 39009 Of 2022

Anguri Devi

APPELLANT

Vs

Delhi Building And Other Construction Workers Board & Anr

RESPONDENT

Date of Decision : 29-05-2023

Acts Referred:

Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 — Rule 272, 273, 273(4)
Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 — Section 14, 16, 17

Citation : (2023) 05 DEL CK 0371

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Chirayu Jain, Sakshi Dewangan, Abhay Dixit, Ankit Kumar, Avni Singh

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

W.P.(C) 12827/2022 & CM APPL. 39007/2022

2. The Petitioner- Ms. Anguri Devi was registered with the Board between June, 2006 to June, 2019. She superannuated on 1st January, 2019. She then applied for pension. However, the date when the application for pension was made is not clear and acknowledgment copy also does not exist on record.

3. The Petitioner then made another application for pension bearing date 18th April, 2021 addressed to the Secretary of the Board. Thereafter, a representation dated 12th May, 2021 was made to the Chairperson and Secretary of the Board with the request for release of the pension of the Petitioner. In addition, vide letter dated 27th January, 2022, issued by the Board the Petitioner was directed to approach the concerned authority for disposal of pension. The said

communication is extracted as under:

"Reference your appeal case No. 04/2021/ regarding claim of pension. It has been found that you have not approached the concerned district authority for grant of pension as per DBOCWW Rules.

Therefore, I am directed to advise you to approach the concerned district authority for disposal of your pension claim. The claim file has been sent to the concerned district authority for disposal of the claim."

4. In the writ petition, it has been stated by the Petitioner that after the issuance of the above letter, the Petitioner filed his application for pension to the concerned authority on 1st February, 2022. Thereafter, the Petitioner has also filed a representation dated 3rd February, 2022 with the Board for the release of pensionary benefits. The relevant extract of the petition is extracted as under:

"12. Pursuant to the Respondent's letter dated 27.01.2022, the Petitioner was able to finally file her pension application on 01.02.2022 with the concerned district officials of North-West district office of the Respondent No. 1. On 03.02.2022, representation was made to Secretary of the Respondent No. 1 seeking directions to be issued for expeditious processing of pension application of Petitioner. The Secretary of the Respondent No. 1 has failed to do so till date and as such, the pension application of the Petitioner remains pending. Copy of the representation dated 03.02.2022 and reply thereto is annexed and marked as ANNEXURE P-10."

5. This Court vide order dated 5th October, 2020 in W.P.(C) 3001/2020 titled *Jai Pal & Ors. v. Delhi Building and Other Construction Workers Welfare Board.*, considering the entire matter and directed the Respondent to process the pension application and release the same to the various workers including the Petitioner. The said order reads as under:

"6. The Act has been promulgated for purposes of regulating the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures. This is clearly a beneficial legislation and its intent and purpose cannot be defeated by denying registration for such a prolonged period. Accordingly, the respondents are directed to expedite the process of verification and complete the same within a period of four weeks from today.

7. As far as the petitioner no.3 is concerned, even according to the Status Report filed by the respondents on 18.05.2020, the petitioner no.3 had applied for registration/renewal on 08.01.2020 and after payment of the charges, was granted such registration having validity till 09.01.2020. Though, it is not clear from the Status Report as to why the registration was valid only for one day, even otherwise, Section 17 of the Act provides for the effect of non-payment of the contribution in the following terms:

"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.”

8. Clearly, the registration of the petitioner no.3 would have ceased to have an effect only if there was a continuous default of a period not less than one year in his contribution. The petitioner no.3 was therefore, entitled to the benefit of the Scheme announced by the respondent no.1.

9. Without prejudice to her contentions, the learned counsel for the petitioners submits that if any payment is due from the petitioners, the same shall be duly paid.

10. In view of the above statement, the respondent no.1 is directed to release the payment under the Scheme announced by it to the petitioner no.3 within a period of four weeks, without awaiting the deposit of any renewal charges by the petitioner no. 3. If any payment with respect to the renewal charges are due from the petitioner no.3, the same be informed to the learned counsel for the petitioners along with the mode and manner in which such payment can be deposited by the petitioner no.3. Once this is communicated, the petitioner no.3 shall deposit the charges so demanded by the respondent no.2.

11. The learned counsel for the petitioners has given the details of other workers who are similarly situated as petitioner no.3. The respondent no.2 shall verify the said list and if any worker is similarly situated as the petitioner no.3, keeping in mind the beneficial purpose of the legislation as also the Scheme announced by the respondents, the modality as has been directed in this order shall be applied to those workers as well.”

6. The position of law with respect of Section 17 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter ‘the Act’) has also been clarified by this Court in order dated 31st March, 2022 in W.P.(C) 9769/2021 titled ‘Rati Ram v. Delhi Building and Other Construction Workers Welfare Board & Anr.’ The relevant extract of the said order is extracted as under:

“It becomes relevant to bear in mind that in terms of Section 17 of the Act a beneficiary ceases to be one if he has failed to pay his contribution as contemplated under Section 16 for a continuous period of not less than one year. The proviso to Section 17 additionally empowers the Secretary of the Board to condone that default subject to reasonable cause being shown. The cessation of a beneficiary is governed by the provisions contained in Section 14. Hence,

unless it can be said that the petitioner had ceased to be a beneficiary or that the contingencies contemplated in Section 14 applied, in such a situation alone could the entitlement of the petitioner to pensionary benefits be denied. In view of the aforesaid, the ends of justice would warrant the competent authority being called upon to duly consider the claim of the petitioner for grant of pensionary benefits bearing in mind the observations made hereinabove.”

7. Further, in case of delay interest is liable to be paid is settled by the Id. Division Bench of this Court vide judgement dated 17th April, 2023 in LPA 209/2023 titled *Rajo v. Delhi Building and Other Construction Workers Welfare Board* [2023/DHC/2581-DB]. The relevant observations of the Id. Division Bench’s order are set out below:

“12. As regards the alleged delay on the part of the respondent no.1 in processing the appellant’s application for pension, it is pertinent to note that even though the appellant completed sixty years of age/superannuated on 01.01.2021, she submitted the application for sanction of pension only on 08.02.2022 i.e. more than 13 months after attaining the requisite age. It is also a matter of record, as noticed in the impugned judgment that the respondent no. 1 vide its letter dated 06.07.2022 pointed out certain deficiencies in the said pension application. The communication expressly referred to the fact that the labour card of the appellant was valid only till 13.12.2020. The said communication also requested the appellant to appear before the concerned Deputy Secretary (District-South), Delhi and provide necessary clarifications. This communication was responded to by the appellant on 05.08.2022. Thereafter, the respondent no. 1 sanctioned the pension on 06.01.2023. As rightly observed in the impugned judgment, it was only after the requisite information was provided by the appellant on 05.08.2022, that the appellant’s application for grant of pension could be processed. In view of the sequence of events and the factual position as emerges from the record, it cannot be said that the impugned judgment has incorrectly computed the period for which interest has been held to be payable.

13. The impugned judgment, taking into the account that the relevant rules do not provide any timeline within which an application for pension is to be processed, proceeded on the basis that the period of 45 days can be taken as a reasonable period for the respondent no.1 board to process the appellant’s application for grant of pension. On that premise, the appellant has been granted interest @ 6% per annum on the delayed amount of pension w.e.f. 21.09.2022 (after excluding 45 days w.e.f. 05.08.2022). No fault can be found with the directions contained in the impugned judgment which are based on the peculiar facts and circumstances of the present case”.

8. Accordingly, bearing in mind the order in *Jai Pal* (supra), as extracted above along with the order dated 17th April, 2023 in *Rajo* (supra), the following directions are issued:

i) The requisite amount with applicable interest shall be released to the Petitioner by 1st July, 2023;

ii) The Petitioner would also be entitled to simple interest at the rate of 6% with effect from 18th March, 2022.

9. Considering the nature of this case, nominal costs of Rs. 2,000/- are awarded in favour of the Petitioner. If the requisite sanction and release of pension is not undertaken by the Board by 1st July, 2023, 6% interest shall be applicable w.e.f. 18th April, 2021, i.e., the first date on record when application for pension is filed.

10. Insofar as CM APPL. 39007/2022 is concerned, no response has been filed. The same relates to release of pension and other benefits to 12 construction workers. The Respondent Board shall look into the cases of all these 12 workers and release the pensions in terms of the orders being passed in similar matters.

11. Petition is disposed of in these terms. All pending applications, are also disposed of.

W.P.(C) 12828/2022 & CM APPL.39009/2022

12. The Petitioner is the widow of Late Sh. Anirudh Mandal, who was a construction worker. He passed away on 23rd April, 2021. The prayer in the present petition is for the issuance of directions to the Delhi Building and Other Construction Workers Welfare Board (hereinafter 'the Board') to release the applicable pension due to the husband of the Petitioner under Rule 272 and Rule 273 of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002 (hereinafter 'the Rules').

13. The husband of the Petitioner was registered with the Board on 20th May, 2011, with registration No.4110507771, and had renewed his membership till 19th May, 2018. As per his Registration Card, his year of retirement is recorded as 2019. His registration card reflects that his family constitutes his wife.

14. The husband of the Petitioner submitted his application for release of pension to the Board, the same bears a date of receiving of 29th April, 2019. However, the said application was rejected by the Board vide letter dated 4th June, 2020 on the ground that the beneficiary was not a registered member of the Board at the time of his superannuation.

15. The husband of the Petitioner appealed the rejection of his application for pension under Rule 273(4) of the Rules. The said appeal was filed on 18th April, 2021. It is the case of the Petitioner that the appellate authority has heard the appeal, however, after orders were reserved on 20th May, 2022. No further development has taken place.

16. The above facts would show that it was after considerable struggle that the Petitioner was able to get her application finally lodged with the concerned Office of the Board. The same continue to remain pending. This is despite the observations of this Court in Jai Pal (supra) in which the Board was directed

process the pension application and release the same to the various workers. The issue raised in this petition in respect of entitlement of the Petitioner, in view of the Section 17 of the Act has since been decided by this Court in Rati Ram (supra).

17. Accordingly, bearing in mind the order in Jai Pal (supra), as extracted above along with the order dated 17th April, 2023 in LPA 209/2023 titled Rajo v. Delhi Building and Other Construction Workers Welfare Board & Anr., the following directions are issued:

i) The requisite pension amount shall be released to the Petitioner by 1st July, 2023,

ii) The Petitioner would also be entitled to simple interest at the rate of 6% with effect from 18th March, 2022.

18. Considering the nature of this case, nominal costs of Rs. 2,000/- are awarded in favour of the Petitioner. If the requisite sanction and release of pension is not undertaken by the Board by 1st July, 2023, 6% interest shall be applicable w.e.f. 20th November, 2020, i.e., 45 days after the order in Jai Pal (supra) when the direction to process the applications was first issued.

19. Insofar as CM APPL. 39009/2022 is concerned, no response has been filed. The same relates to release of pension and other benefits to 12 construction workers. The Respondent Board shall look into the cases of all these 12 workers and release the pensions in terms of the orders being passed in similar matters.

20. Petition is disposed of in these terms. All pending applications, are also disposed of.

21. In case any other benefits including death and funeral benefits are due to the Petitioner, the Board to process them, after receiving the required applications.

22. The Board is also directed to expeditiously process applications of any other workers/beneficiaries apart from the above-mentioned individuals who are similarly placed.