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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 20.02.2024*

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Pronounced on: 01.05.2024+ **LPA 372/2023 and CM APPL. 20067/2023****DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
WELFARE BOARD** AppellantThrough: Mr Abhay Dixit, with Mr Akhilesh
Dixit, Advocates.

Versus

DULARI DEVI & ANR. RespondentsThrough: Mr Chirayu Jain, Advocate for
respondent no.1.
Ms Urvi Mohan, Advocate for
respondent no.2.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.:****Prefatory Facts**

1. This appeal is directed against a common judgment dated 23.02.2023 [hereafter referred to as the "impugned judgment"] rendered by the learned Single Judge in WP (C) 13969/2022 and WP (C) 14432/2022. Respondent no. 1 in the instant appeal is the wife of the deceased worker, Shri Gauri Shankar Gupta, while respondent no. 2 is the Govt. of NCT of Delhi [GNCTD].



1.1 Respondent no.1/Smt. Dulari Devi had preferred WP (C) 13969/2022, in which the order dated 23.08.2022 passed by the appellant, i.e., Delhi Building and Other Construction Workers Welfare Board [hereafter referred to as “the Welfare Board”] was assailed.

1.2 *Via* the order dated 23.08.2022, the Welfare Board rejected the application submitted by the respondent no.1’s husband for releasing his pension. A similar order was passed on an application preferred by one Smt. Ramrati, which the Welfare Board rejected *via* order dated 26.08.2022. This led to Smt. Ramrati's son, Shri Ram Suresh, instituting a writ action, i.e., WP (C) 14432/2022.

1.3 As indicated above, respondent no.1/Dulari Devi and Shri Ram Suresh [son of Smt. Ramrati] had assailed the said orders *via* WP (C) 13969/2022 and WP (C) 14432/2022, which were allowed by the learned Single Judge *via* the impugned judgment.

1.4 Notably, the instant appeal is confined to the relief granted to respondent no.1/Smt. Dulari Devi.

2. The central issue which arises for consideration is whether Shri Gauri Shankar Gupta, a building worker, was entitled to pension under the provisions of The Delhi Building and Other Construction Workers [Regulation of Employment and Conditions of Service] Act, 1996 [hereafter referred to as “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”]?

2.1 The consequential issue that arises for consideration here is whether respondent no. 1/Smt. Dulari Devi would be entitled to receive a pension in



terms of the BOCW Act read with the BOCW Rules if the answer to the main issue culled out above is in the affirmative.

3. The adjudication of the issues adverted to hereinabove requires us to notice the following broad facts:

3.1 Shri Gauri Shankar Gupta was evidently employed as a building worker in Delhi for several decades. He registered with the Welfare Board for the first time on 17.12.2007, when he was 58 years old.

3.2 Upon registration, Shri Gauri Shankar Gupta was issued a registration card bearing no. 4071200015. At the time of registration, Shri Gauri Shankar Gupta had deposited the prescribed contribution, *albeit* for three months, i.e., between 17.12.2007 and 17.03.2008.

4. Concededly, Shri Gauri Shankar Gupta reached 60 on 01.01.2009. Upon completing 60 years, Shri Gauri Shankar Gupta preferred an application for pension with the Welfare Board. In the interregnum, Shri Gauri Shankar Gupta had also applied to renew his registration with the Welfare Board, which remained pending until 31.01.2012.

4.1 On 31.01.2012, the Welfare Board renewed Shri Gauri Shankar Gupta's registration until 16.10.2012, against the requisite prescribed fee/contribution of Rs.532/-.

5. The record discloses that on 15.07.2020, Shri Gauri Shankar Gupta was served with a deficiency letter dated 24.06.2020 from the Welfare Board [hereafter referred to as "the first deficiency letter"]. *Via* the deficiency letter, the Welfare Board raised an issue concerning the renewal of Shri Gauri Shankar Gupta's registration with the Welfare Board. In effect, the Welfare Board sought to review its decision dated 31.01.2012, whereby Shri Gauri Shankar Gupta's registration had been renewed.



5.1 A response dated 03.08.2020 was submitted on behalf of Shri Gauri Shankar Gupta to the issue raised in the first deficiency letter. Among other things, Shri Gauri Shankar Gupta asserted that once his registration with the Welfare Board had been renewed pursuant to the deposit of arrears, no power was invested in the Welfare Board to review the decision. *Qua* the response submitted, Shri Gauri Shankar Gupta did not receive any clear reply from the Welfare Board up until 31.12.2020, when an official of the Welfare Board informed him that his application for grant of pension had been rejected on 19.08.2020.

5.2 Aggrieved by the decision, Shri Gauri Shankar Gupta lodged an appeal on 19.01.2021 under Rule 273(4) of the BOCW Rules. The concerned statutory authority, i.e., the Secretary, Welfare Board, *via* order dated 16.04.2021, set aside the order dated 19.08.2020. Significantly, in his decision, the Secretary of the Welfare Board made note of the advice given by the Legal Advisor of the Labour Department. The extract of the advice, which was recorded in the order dated 16.04.2021, is set forth hereafter:

“The advice in the matter received from [the] Labour Department through [the] Legal Advisor of [the] Labour Department as under:

“The matter pertains to processing of Pension claim of Sh. Ramjeet who registered himself with the Board on 23.12.2016 and renewed his registration from 23.12.2016 to 22.12.2018. Sh. Ramjeet turned 60 years on 01.01.2019. He applied for pension, however, the same was rejected vide letter dated 04.06.2020 on the ground that the applicant Sh. Ramjeet is not eligible for pension as on the date of superannuation, he was not a registered member of the Board.

The applicant has filed writ petition no. WP (C) 10915/2020, Sh. Ramjeet Vs. DOCWW Board challenging the order dated 04.06.2020 of the Deputy Secretary (Board).

In this regard, it is submitted that as per section 16 of the BOCW Act, 1996 a building worker who has been registered as a beneficiary under



BOCW Act, 1996 has to pay contribution to the Board until he attains the age of sixty years.

It is further submitted that as per Section 17 of the Act, if the beneficiary (registered construction worker) has not paid his contribution under Section 16 of the Act for a continuous period of contribution he can get the benefits for upto a period of one year from the date his contribution becomes due.

Pension is one of the Welfare Schemes of the Board. The relevant rules in respect of pension 272 and 273. The eligibility of getting pension has been prescribed in rule 272 of Delhi Building & Other Construction Workers (RE&CS) Rules, 2002. A construction worker who is a member of the fund should have been working as a building worker for not less than one year and has completed sixty years of age.

As per section 17 of BOCW Act, 1996 the applicant Sh. Ramjeet is a beneficiary upto the date of his superannuation on 01.01.2019 (less than one year from the date of his renewal/payment of contribution become due) and decision of the Board that the applicant is not eligible for pension as he is not a member on the date of his superannuation is flawed in view of the section 17 of the BOCW Act, 1996.”

5.3 Having regard to the advice received from the Legal Advisor, Labour Department, the Secretary, Welfare Board issued a direction to the Deputy Secretary, North-West to decide the matter afresh, after giving an opportunity of hearing to Shri Gauri Shankar Gupta. Pertinently, the order dated 16.04.2021 concluded with the observation that the Deputy Secretary, while passing the order, will not only bear in mind the facts placed on record by Shri Gauri Shankar Gupta but also the advice rendered by the Labour Department.

5.4 Unfortunately, Shri Gauri Shankar Gupta expired on 05.05.2021, nearly three weeks after the order dated 16.04.2021 was passed. Respondent no.1/Smt Dulari Devi received a fresh notice dated 28.07.2021 to conduct a hearing in the matter. Notably, the notice did not advert to the order dated



16.04.2021. A hearing *qua* the pension application was granted on 16.08.2021.

5.5 Another deficiency letter dated 02.09.2021 was served on the respondent/Smt Dulari Devi by the Welfare Board [hereafter referred to as the "Second Deficiency Letter"]. *Via* this communication, respondent no.1/Smt Dulari Devi was asked to produce documents related to the renewal of Shri Guari Shankar Gupta's membership for the period spanning between 17.03.2008 and 16.10.2012. Since the receipts were unavailable and not submitted, the application preferred by the deceased Shri Gauri Shankar Gupta for granting a pension was temporarily closed. A communication dated 14.10.2021 [hereafter referred to as "the second rejection order"] conveying the said decision was served on respondent no.1/Smt Dulari Devi.

6. Respondent no.1/Smt Dulari Devi and others protested against the closure of the application and, in this context, submitted representations through letters dated 03.11.2021 and 24.11.2021. Respondent no.1/Smt Dulari Devi also brought the illegal closure of pension applications based on the non-availability of renewal receipts to the notice of the Secretary of the Welfare Board *via* communication dated 23.12.2021. In response, the Secretary of the Welfare Board suggested that the applicants file affidavits to overcome the objections raised by the Welfare Board in its deficiency letter.

6.1 The record shows that one, Ms Badam Verva, who was placed in a similar situation, filed an affidavit in substitution of the renewal receipts. Since Ms Badam Verva's application for pension was not processed by the Welfare Board despite the affidavit being filed, she approached this Court



by way of a writ action [WP (C) 6121/2022]. This Court passed orders dated 18.04.2022 and 27.07.2022, whereby directions were issued to consider the affidavit filed by Ms Badam Verva in response to the deficiency letters.

6.2 Taking a cue from the direction issued by this Court in Ms Badam Verva's case, respondent no.1/Smt Dulari Devi filed an affidavit on 10.05.2022. The Welfare Board rejected the application for pension *via* order dated 23.08.2022 after nearly fifteen (15) months of the order dated 16.04.2021 being passed.

7. Aggrieved by the order dated 23.08.2022, respondent no.1/Smt Dulari Devi instituted a writ action i.e., WP (C) 13969/2022 which was disposed of *via* the impugned judgment.

Submissions of Counsel

8. Against this backdrop, Mr Abhay Dixit advanced arguments on behalf of the Welfare Board, while Mr Chirayu Jain advanced submissions on behalf of respondent no.1/Smt Dulari Devi.

9. The submissions advanced by Mr Dixit can, broadly, be paraphrased as follows:

9.1 Under the BOCW Act and BOCW Rules, a building worker is not entitled to pension solely upon reaching 60 years of age. The claimant, i.e., the building worker is necessarily required to apply for pension in the prescribed form, i.e., Form XXXV in accordance with Rule 272 of the BOCW Rules.

9.2 The eligibility criteria for granting a pension to a building worker is provided in sub-Section (2) of Section 14 of the BOCW Act. Section 14(2), which opens with a non-obstante clause, provides that a construction worker would be eligible for a pension if he fulfils the following criteria:



- (i) He should have attained the age of 60 years.
- (ii) He should have been a beneficiary continuously for three (3) years immediately before reaching the age of 60.

9.3 The explanation appended to sub-Section (2) of Section 14 permits inclusion in the stipulated timeframe, i.e., three (3) years, any period for which the building worker has been a beneficiary with any other Welfare Board immediately before his registration with the concerned Welfare Board.

9.4 Since the deceased, Shri Gauri Shankar Gupta had been registered with the Welfare Board only for three months, between 17.12.2007 and 17.03.2008, he did not fulfil the eligibility criteria as provided in Section 14(2) of the BOCW Act when he reached 60 years of age, i.e., on 01.01.2009.

9.5 Contrary to the learned Single Judge's view, Rule 272 of the BOCW Rules would have no application for grant of pension, as it is in direct conflict with the provisions of Section 14(2) of the BOCW Act. Rule 4 of the BOCW Rules, in no uncertain terms, provides that the provisions of the BOCW Rules would be in addition to and not in substitution of or in diminution of the requirements imposed by the BOCW Act. In other words, in the event of inconsistency, the provisions of the BOCW Act will override the BOCW Rules.

9.6 The impact of the impugned judgment is that any person who acquires membership of the Welfare Board, even for a day between the prescribed age span, i.e., 18 years and 60 years, is entitled to pensionary benefits at the rate of Rs.3,000/-per month.

9.7 An interpretation of the kind placed by the learned Single Judge on



the provisions of the BOCW Act would put a severe financial burden on the Welfare Board. Presently, approximately 17 lakh members are registered with the Welfare Board, and whether or not they have renewed their membership, they would be entitled to a pension. The monthly burden that the Welfare Board would have to bear would be approximately Rs.510 crores (annual burden being Rs. 6,120/- crores) against collections made from the imposition of cess on construction amounting to nearly Rs.290 crores to Rs.300 crores.

9.8 Under the model scheme framed for building workers as per the directions of the Supreme Court in WP (C) 318/2006, titled *NCC-CL v. Union of India & Ors.* concerning pension, the following has been incorporated:

"Pension: Constitute permanent liability which the states may not be able to sustain in the long term, the State Welfare Boards may formulate pension schemes depending upon their financial capacity. However, pension should be admissible to only those registered of 10 years. In this regard the State Welfare Board should issue a certificate to the effect that a BOC worker has remained registered for a period of 10 years."

10. Mr Jain, in rebuttal, argued that the BOCW Act is a welfare legislation and must be kept in mind when interpreting its provisions. The Welfare Board was invested with the authority to provide various benefits which are captured in Section 22(1)(a) to (g) of the BOCW Act. Under Clause (h) of Section 22(1) of the BOCW Act, the Welfare Board has been invested with a residuary power to make provisions for and improvement of such other welfare measures and facilities as may be prescribed.

10.1 Insofar as pension payment to beneficiaries was concerned, the provision concerning the same is contained in Clause (b) of sub-Section (1) of Section 22. The said provision simply stated that pension would be paid



to beneficiaries who completed 60 years of age. The said provision had to be read with Section 2(1)(b), which defined the expression beneficiary to mean a building worker registered under Section 12 of the BOCW Act. Section 12, in turn, provided that only that building worker could register himself with the Welfare Board who had completed 18 years of age but had not reached 60 years of age and who had been engaged in any building or construction work for not less than 90 days during the preceding 12 months.

10.2 It was pointed out that under Section 14 of the BOCW Act, the registration acquired by the building worker for claiming benefits provided under the Act ceases upon the building worker attaining 60 years of age or when he is not engaged in building or other construction work for 90 days or more in a year.

10.3 In this context, reference was also made to the proviso of sub-Section (1) of Section 14, which excluded, in calculating 90 days, any period of absence from the building or other construction work due to personal injury suffered by a building worker on account of an accident arising out of or in the course of his employment.

10.4 According to Mr Jain, sub-Section (2) of Section 14 was related to Section 21(1)(h) of the BOCW Act. It was contended that apart from the specific benefits that the Welfare Board could accord under Clauses (a) to (g) of Sub-Section (1) of Section 14, it was vested with the power to make further provisions or improvements in the welfare measures and facilities as may be prescribed from time to time. It was contended that if such other welfare measures were provided or improvements were made, a building worker could avail of the same only if he had been a beneficiary for at least three years immediately preceding the date he completed 60 years of age.



10.5 The submission thus advanced by Mr Jain was that for availing pension, the building worker was not required to fulfil the criteria stipulated in sub-Section (2) of Section 14. According to Mr Jain, no eligibility criteria were provided in the BOCW Act for a pension grant.

10.6 Mr Jain submitted that the eligibility criteria was, in fact, provided in Rule 272 of the BOCW Rules. As per the said provision, a building worker, who was a member of the fund would become eligible for pension upon completion of 60 years of age, if he had been working for not less than one year after the commencement of the BOCW Rules.

10.7 Therefore, Mr Jain contended that contrary to the submissions advanced on behalf of the Welfare Board, there was no inconsistency between the provisions of the BOCW Act and the BOCW Rules. Thus, according to Mr Jain, Mr Dixit wrongly relied upon Rule 4 of the BOCW Rules to buttress his arguments.

10.8 Regarding Mr Dixit's submissions *qua* financial burden, Mr Jain submitted that building workers could not be denied their statutory rights based on untested facts and figures, as these aspects were irrelevant when construing the provisions of the BOCW Act and BOCW Rules.

Analysis and reasons

11. Having heard learned counsel for the parties and perused the record, it is pretty evident that there is no dispute concerning the essential facts obtaining in the matter. These facts have been adverted to in the earlier part of the judgment.

11.1 For emphasis, we may note that it is a matter of record that Shri Gauri Shankar Gupta registered with the Board in the first instance for three (03) months spanning between 17.12.2007 and 17.03.2008, upon payment of the



requisite contribution.

11.2 The Welfare Board, *via* order dated 23.08.2022, rejected the application made for the grant of pension on the ground that Shri Gauri Shankar Gupta did not fulfil the eligibility criteria provided under sub-Section (2) of Section 14¹ of the BOCW Act. In other words, according to the Welfare Board, since Shri Gauri Shankar Gupta had not been registered with it as a beneficiary for three (03) years immediately preceding the date when he completed 60 years of age, he could not be considered for being accorded pension.

12. The conclusion reached by the Welfare Board was predicated on the stand taken by it that the power vested in it under Clause (b) of sub-Section (1) of Section 22² for the grant of pension to beneficiaries who had completed 60 years of age was controlled by the eligibility criteria provided under sub-Section (2) of Section 14 of the BOCW Act.

13. For the reasons given hereafter, the Welfare Board's position is not in accordance with the scheme of the BOCW Act and the BOCW Rules.

13.1 The expression “beneficiary” is defined under Section 2(1)(b)³ of the BOCW Act. The Section provides that the beneficiary is a building worker

¹ 14 (2) Notwithstanding anything contained in sub-section (1), if a person had 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.

Explanation.—For computing the period of three years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

² 22. Functions of the Boards.—

(1) The Board may—(a)

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;...

³Section 2 (1) In this Act, unless the context otherwise requires,—

(a)

(b) “beneficiary” means a building worker registered under section 12;



registered under Section 12 of the BOCW Act.

13.2 The expression “building worker” is defined in Section 2(1)(e)⁴ of the Act. This provision, *inter alia*, brings within its sway a person who is employed to carry out any skilled, semi-skilled or un-skilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment are expressed or implied, in connection with any building or other construction work. The provision explicitly excludes such persons who are employed mainly in a managerial or administrative capacity or those who are engaged in a supervisory capacity, drawing wages which exceed Rs.1,600/- per month or even those who exercised, either by nature of the duties attached to the office or because of powers vested in such person; functions which are mainly managerial.

13.3 Concededly, there is no contestation that Shri Gauri Shankar Gupta was a building worker within the meaning of the provisions of Section 2(1)(e) of the BOCW Act. This aspect gains credence since Shri Gauri Shankar Gupta was registered as a beneficiary by the Board between 17.12.2007 and 17.03.2008.

13.4 There is, therefore, no dispute that Shri Gauri Shankar Gupta fulfilled

⁴ 2(1) In this Act, unless the context otherwise requires,—

(a).....

xxx xxx xxx

(e) “building worker” means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;



the criteria for registration as a beneficiary, as prescribed under Section 12⁵ of the BOCW Act. Section 12, *inter alia*, provides that a building worker can register as a beneficiary under the BOCW Act if he is between 18 and 60 years of age and has been engaged in building or other construction work for not less than 90 days during the 12 months preceding the date when he applies for registration.

13.5 To avail of the **benefits** provided under the BOCW Act, the building worker has to contribute to the fund constituted under Section 24 of the said Act maintained by the State Welfare Board. This obligation to contribute to the fund at such rate per mensem is cast on the building worker under Section 16 of the BOCW Act. The concerned State Government notifies the rates in the official gazette.

13.6 That every building worker who is registered as a beneficiary is entitled to the **benefits** provided by the State Welfare Board from its fund is stipulated in Section 11 under the BOCW Act, *albeit* subject to other provisions of the said Act.

13.7 Significantly, as per Section 17⁶ of the BOCW Act, a building worker

⁵ 12. Registration of building workers as beneficiaries.—(1)Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

⁶ Section 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.

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If any beneficiary fails to pay his contribution for a continuous period of not less than one year, he ceases to be a beneficiary of the Fund. But if the failure to pay the contribution was for a reasonable ground and the building worker is willing to deposit the arrears, his registration may be restored.



ceases to be a beneficiary if he has not made contributions in line with the provisions of sub-Section (1) of Section 16 for a continuous period of not less than one year. That said, under the proviso appended to Section 17, the Secretary of the State Welfare Board can restore the registration of the building worker if he is satisfied that non-payment of contribution was for a reasonable ground and the building worker willingly deposited the arrears concerning the contributions which he was required to make in terms of the relevant notification issued under Section 16 of the BOCW Act.

14. In this case, as noted hereinabove, Shri Gauri Shankar Gupta's application for registration renewal, along with others, was pending and finally allowed on 31.01.2012. The exercise of the power of registration/renewal in Shri Gauri Shankar Gupta's case, as observed in the order dated 16.04.2021 passed by the Secretary, Welfare Board, was in consonance with Section 17 of the BOCW Act.

14.1 There is no cavil that Shri Gauri Shankar Gupta had deposited Rs.532/- as his contribution for the period spanning between 17.03.2008 and 16.10.2012. Thus, the renewal of registration as a beneficiary would relate back to March 2008. Therefore, on the date Shri Gauri Shankar Gupta reached the age of 60, he fulfilled, as per the record, the eligibility criteria concerning registration and crossing the threshold of 60 years of age to claim a pension from the Welfare Board.

15. Thus, the only inflection point which arises for consideration is whether Shri Gauri Shankar Gupta should have been registered [as a beneficiary in the immediately preceding three years before attaining the age of 60 years as provided in sub-Section (2) of Section 14] for claiming pensionary benefits?



15.1 The answer to this question, to our minds, lies in Section 22(1)⁷ of the BOCW Act. Clauses (a) to (g) of sub-Section (1) of Section 22 of the BOCW Act invest in the Welfare Board power to accord specific benefits to registered beneficiaries such as: (i) assistance in the event of an accident; (ii) payment of pension to those who completed 60 years of age; (iii) sanction of loans and advances for construction of a house not exceeding such amount and such terms and conditions, as may be prescribed; (iv) payment of such amount in connection with premia for group insurance scheme, as may be deemed fit; (v) render financial assistance for education of children, as may be prescribed; (vi) meet expenses for treatment of medical ailments suffered by the beneficiary or such dependent, as may be prescribed; and (vii) lastly, accord monetary maternity benefit to female beneficiaries.

16. As would be evident, the Welfare Board has been, among other things, conferred with a specific power to grant pensions to beneficiaries who have reached 60 years of age. However, the BOCW Act does not provide eligibility criteria as regards the qualifying period for which the building worker should have worked before he reached 60.

17. On behalf of the Welfare Board, it is sought to be argued that the qualifying period for entitlement for pension is provided in sub-Section (2)

⁷ Section 22. Functions of the Boards.—

(1)The Board may—(a)provide immediate assistance to a beneficiary in case of accident;(b)make payment of pension to the beneficiaries who have completed the age of sixty years;(c)sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;(d)pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;(e)give such financial assistance for the education of children of the beneficiaries as may be prescribed;(f)meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;(g)make payment of maternity benefit to the female beneficiaries; and(h)make provision and improvement of such other welfare measures and facilities as may be prescribed.



of Section 14. In our opinion, this argument contradicts the plain language of sub-Section (2), which, although beginning with a non-obstante clause, adverts to an eligibility period concerning “*such benefits as may be prescribed*”.

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 Rules⁸. 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

⁸ 272. Eligibility for pension. - (1) 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. The pension will become payable from the first day of the succeeding to the month in which he completes sixty years of age.



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. Although Shri Gauri Shankar Gupta had asserted that he had been working as a building worker in Delhi for several decades before his registration with the Welfare Board on 17.12.2007, even if it is assumed that he commenced his work from the said date, he would have met the minimum eligibility criteria of one year provide in Rule 272 before the date when he completed the age of 60 years.

21. As noted above, it is not in dispute that Shri Gauri Shankar Gupta turned 60 on 01.01.2009, at which point he had already worked as a building worker for more than one (01) year.

22. Therefore, in our view, the order dated 23.08.2022 passed by the Welfare Board was contrary to the provisions of the BOCW Act and BOCW Rules. As discussed above, the learned Single Judge rightly allowed the prayers made in Smt Dulari Devi's writ petition with costs, as indicated in the impugned judgment.

23. The submission advanced on behalf of the Welfare Board that the interpretation sought to be placed on the provisions of the Act on behalf of respondent no.1/ Smt Dulari Devi, if not accepted, will lead to a heavy financial burden, in our opinion, cannot be countenanced.

23.1 The Welfare Board is duty-bound to extend benefits to building workers in line with the provisions of the BOCW Act, which is, without a doubt, a social welfare legislation. The object and purpose of the Act are not only to regulate employment and conditions of service for building workers but also to provide safety, health, and other welfare measures as may be deemed fit from time to time.



23.2 The thrust of the BOCW Act is to provide succour to the unorganised labour force deployed in the building and construction industry. By any account, the per mensem rate of pension, which is Rs. 3000, is minuscule, given the cost of living in a city like Delhi. The Welfare Board, if deemed necessary, may have to find resources, including increasing the rate of levy of cess, to shore up funds to extend benefits to building workers. The financial burden that may befall the Welfare Board cannot form the basis for diluting the will of the legislature, which is reflected in the scheme of the BOCW Act and Rules. Therefore, this argument advanced on behalf of the Welfare Board does not impress us and is thus rejected.

24. Thus, for the foregoing reasons, we are not persuaded to interfere with the impugned judgment. The appeal is, accordingly, dismissed.

(RAJIV SHAKDHER)
Judge

(AMIT BANSAL)
Judge

MAY 1, 2024

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