

Court No. - 33

Case :- WRIT - A No. - 11263 of 2023

Petitioner :- Manoj Kumar and others

Respondent :- State of U.P. and others

Counsel for Petitioner :- Siddharth Khare, Mahesh Narain Singh, Senior Advocate

Counsel for Respondent :- C.S.C., Anjali Upadhya

Hon'ble J.J. Munir,J.

This writ petition has been filed, praying that a *mandamus* be issued to the respondents, in particular, the Chairman and other officers of the Greater NOIDA Industrial Development Authority to assign the petitioners duties of undertaking measurement of various civil works etc. done by or on behalf of the Authority. The petitioners, who are three in number, claim this right on the basis of a decision taken by the Board of Directors *vide* Item No. 122/6 in their meeting held on 26.06.2021, as also the Office Order dated 10.07.2021 issued by the Additional Chief Executive Officer, Greater NOIDA Industrial Development Authority in implementation of the said resolution.

2. Petitioner Nos. 1, 2 and 3 were appointed on contractual basis by the Greater NOIDA Industrial Development Authority¹ on 01.08.2000, 22.05.2002 and 01.06.2001, respectively. They were retained on contract as Assistant Managers by the respondent-Authority. The first petitioner, Manoj Kumar, is the holder of Diploma in Civil Engineering, whereas petitioner No. 2, Mahendra Pratap Singh is a Bachelor of Science (B.Sc.) and the holder of a Diploma in Civil Engineering. Petitioner No. 3, Sunil Kumar Tyagi, holds the degree of Bachelor of Technology (B.Tech.) in

¹ 'the respondent-Authority' for short

Civil Engineering, besides a diploma in that discipline. The petitioners say that they have continuously discharged all duties assigned to them since time they were initially engaged, without any break. There appears to be thick litigation between the petitioners on one hand and the respondent-Authority on the other, regarding the petitioners' right to be regularized in service. The details of that litigation is summarized in paragraph No. 9 of the writ petition. Since there is no issue as such about the subject matter of all that litigation, it would neither be apposite nor necessary to refer to those details here.

3. Here, the issue is whether the petitioners, who are Assistant Managers, a nomenclature for an 'engineer' coined by the respondent-Authority, but engaged on contract through a placement agency, are entitled to be assigned the duties of undertaking measurement of work done by or on behalf of the respondent-Authority, in the same manner as Assistant Managers/Engineers in the regular cadre of the respondent-Authority.

4. The petitioners say that they have a right to be assigned measurement work and write the measurement book² like their counterparts in the regular establishment, in accordance with the decision of the Board of Directors taken in their 122nd meeting held on 26.06.2021. In the said meeting, it is asserted, that a decision was taken investing Assistant Managers hired through placement agencies and working with the respondent-Authority for five years, with authority to undertake measurement of work and write the MB. It is pleaded that pursuant to the aforesaid resolution of the Board, the Additional Chief Executive Officer issued an order dated 10.07.2021, enforcing the said decision subject to conditions in terms of which an Assistant Manager engaged through a service provider may be authorized to write the MB. It is pointed out that *vide* order dated 10.07.2021, an order has been passed by the Additional

2 'MB' for short

Chief Executive Officer, conferring authority upon three Assistant Managers engaged through service providers, identically circumstanced as the petitioners, to wit, Anoop Chandra Sharma, Mohd. Nazim Khan and Lokesh Chand, to undertake measurement of work done and write the MB.

5. The grievance is that similar orders have not been passed, authorizing the petitioners to undertake measurement work and write the MB. The petitioners plead hostile discrimination on the above count in paragraph Nos. 22 to 26 of the writ petition. It is also pleaded in paragraph No. 26 that the petitioners are substantially senior to the three Assistant Managers, who have been authorized to undertake measurement work and write the MB. There is then a plea of *mala fides*, or so it seems in paragraph No. 27 of the writ petition, which says that the discrimination has come about on account of the petitioners' pending litigation with the respondent-Authority with regard to their right to be regularized.

6. A counter affidavit has been filed on behalf of the respondent-Authority represented by respondent Nos. 2, 3 and 4. The affidavit is sworn by the Manager (Administration/General) of the respondent-Authority. In paragraph No. 10 of the affidavit, it is averred that there are no duties of measurement to be undertaken by Assistant Managers deployed in the planning department. The petitioners are all working in the planning department, and therefore, cannot be assigned duties meant for the project department. It is also pleaded that the petitioners have no legal and vested right to determine the assignment of work of their choice. It is the sole discretion of the respondent-Authority, as the employers, to take such work from them, as they think fit. It is not disputed that Anoop Chandra Sharma, Mohd. Nazim Khan and Lokesh Chand are also contractual employees engaged through outsourcing like the petitioners, but it is said that these men are working with the project department, and,

therefore, they have been assigned work of measurement with a right to write the MB. The plea of discrimination as well as *mala fides* has been denied.

7. In the rejoinder affidavit filed on behalf of the petitioners, with more explanation and detail, the petitioners' stand in the writ petition has been reiterated and reaffirmed.

8. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Siddharth Khare, learned Counsel for the petitioner, Mr. Mahesh Narain Singh, learned Counsel for respondent Nos. 2, 3 and 4 and Mr. Rajesh Kumar Mishra, learned Standing Counsel appearing on behalf of respondent No.1.

9. Mr. Ashok Khare has drawn the Court's attention to the Office Note dated 25.07.2000 submitted with regard to five persons, including petitioner No. 1, for approval by the Chief Executive Officer of the respondent-Authority. It is pointed out in the office note that the five men referred to therein, including the first petitioner, were engaged through a service provider. The note clearly demonstrates that the engagement of the petitioner No. 1 was one with regard to execution of several works, all of which fall under the project department. Similar is the case with regard to petitioner Nos. 2 and 3. He submits further that the stand is incorrect that the duty to do measure work done and write the MB is limited to the project department. The learned Senior Advocate says that the duty of writing the measurement book is involved in all works, wherever construction is undertaken, and that is what most of the business of the respondent-Authority is about. Therefore, to deprive the petitioners of undertaking that part of the duty by saying that they are employed with the planning department, and not the project department, is an illusory distinction. It is a distinction devised to discriminate.

10. Mr. Mahesh Narain Singh, learned Counsel appearing on behalf of the respondent-Authority says that the petitioners have not pointed any Assistant Manager engaged through a service provider and for the time being, assigned to the planning department, who might have been given duties of doing measurement work or writing the MB.

11. Mr. Rajesh Kumar Mishra, learned Standing Counsel, has also adopted the submissions of Mr. Mahesh Narain Singh and submits that there is neither any discrimination nor *mala fides* involved.

12. This Court has keenly considered the rival submissions advanced by the learned Counsel for parties and perused the record. In our opinion, the issue whether the petitioners are working with the planning department and not the project department, and for that reason, not assigned duties to measure work or write the MB, is besides the point. This may or may not be the system devised by the respondent-Authority to assign duties to its employees. This Court does not think that it is worth its while to investigate these facts at all.

13. What is relevant is : Whether the petitioners have a right to insist doing a particular kind of work? Can the petitioners say that they ought to be assigned particular duties or work by the respondent-Authority? This Court is of considered opinion, they cannot.

14. It is not the petitioners' case that assignment of measuring work done or writing the MB is gratuitous work, that brings in some extra emoluments to those assigned with it. It is like any other work in the establishment. Assignment of duties to an employee is essentially and entirely the employer's prerogative. The employee has no say in the matter at all. Whether one set of duties is assigned to the employee or another, the employee has no right to raise grievance about it or assert a right to the assignment of a particular work or duty. The petitioners, who are Assistant Managers employed through service providers, have been

assigned to the planning department and are admittedly not entrusted with the work of measurement or writing the MB. The non-assignment of measurement work to the petitioners does not lead to any diminution in their emoluments or the payment of some extra emoluments to those who are assigned the work of doing measurement or writing the MB. Thus, no prejudice, at all, is caused to the petitioners, nor right of the petitioners, as understood in law, violated by the non-assignment of measurement work. Therefore, the plea of discrimination or the claimed discrimination being brought about in consequence of *mala fides* is besides the point.

15. In our opinion, therefore, the petitioners have no right to seek the relief they do through this petition.

16. This writ petition, accordingly, **fails** and shall stand **dismissed** with costs.

Order Date :- October 19, 2023

I. Batabyal

(J.J. Munir, J.)