

WP(C) 1620/2013

BEFORE

THE HON'BLE MR. JUSTICE A.K. GOSWAMI

Heard Mr. D.K. Mishra, learned Senior Counsel for the petitioner. Also heard Ms. D. Sinha, learned C.G.C. appearing for the respondent Nos. 1 and 2.

The petitioner No.1 is a registered association of the officers of Numaligarh Refinery Ltd. and petitioner No.2 is the General Secretary of the said association.

This writ petition under Article 226 of the Constitution of India is directed against the Notification dated 12-02-2013 on the subject of Performance Management System of Management Staff effective from 2012-13 issued by the General Manager (HR), Numaligarh Refinery Ltd.

Mr. Mishra submits that based on the Office Memorandum dated 26-11-2008 issued by the Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, the Numaligarh Refinery Ltd., which is a Central Public Sector Enterprise, issued a Handbook on Performance Management System dated 24-12-2009 indicating, amongst others, the guiding principles for performance appraisal giving emphasis on transparency. It is also submitted by him that an Office Memorandum dated 28-05-2009 (Annexure-5) to the writ petition was issued by the Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, Government of India on the subject of Maintenance and preparation of Annual Performance Appraisal Reports-communication of all entries for fairness and transparency in public administration. He contends that the said Office Memorandum is binding on Numaligarh Refinery Ltd., the same having been issued by the Department of Public Enterprises. He submits that the Notification dated 12-02-2013 (Annexure-19) to the writ petition, by which appraisal of performance of Management Staff is sought to be evaluated applying totally different yardstick, that too, with retrospective effect, is wholly not sustainable in law and that the said Notification comes in direct conflict with the Office Memorandum dated 28-05-2009.

Mr. Mishra has submitted that highlighting the grievances, the petitioner No.1 had submitted a representation dated 05-03-2013 (Annexure-20) to the writ petition to the Managing Director, Numaligarh Refinery Ltd. However, without attending to the same, the Numaligarh Refinery Ltd. is planning to implement the Notification dated 12-02-2013.

Ms. D. Sinha, learned C.G.C. submits that considering the controversy raised, this Court may direct the Managing Director, Numaligarh Refinery Ltd., to dispose of the said representation filed by the petitioner No.1.

I have heard the learned counsel appearing for the parties and considered the submissions.

Having regard to the order that is proposed to be passed, this Court is of the considered opinion that it is not necessary to issue notice to the respondent Nos. 3 to 7, Numaligarh Refinery Ltd. and its functionaries as this order will not prejudicially affect their interest.

Considering the matter in its entirety, and more particularly, taking cognizance of the fact that a representation is pending for consideration, without expressing any opinion on the merits of the contentions advanced by Mr. Mishra, this writ petition is disposed of with a direction to the respondent No.4 to dispose of the representation dated 05-03-2013 (Annexure-20) to the writ petition in accordance with law. It is further provided that till disposal of the said representation, the Numaligarh Refinery Ltd. authorities shall not implement the Notification dated 12-02-2013. The respondent No. 4 will also communicate his decision on the representation to the petitioner No.1. Needless to say that if the petitioners are aggrieved by any decision taken by respondent No.4, it will be open to the petitioners to avail such legal remedies as may be available to them in law.

Writ petition stands disposed of with the aforesaid directions and observations.