

**01.03.
2023**

Ct. No. 04

Ab

WP.CT 125 of 2022

Dr. Debajyoti Nanda

Vs.

The Union of India and others.

**Mr. D. N. Ray,
Mr. Sankha Ghosh,
Mr. M. N. Ray,
Mr. G. Halder.**

... for the petitioner.

**Mr. Indrajeet Dasgupa,
Ms. Rima Biswas.**

... for the UOI.

Mr. Suman Banerjee,

... for the respondent no. 5.

Both the petitioner as well as the private respondent offered their candidature for the post of Assistant Professor, Ophthalmology in AIIMS, Kalyani. The provisional panel was published wherein the private respondent was shown in serial no. 1. However, the petitioner felt aggrieved by and approached the Director, AIIMS, Kalyani by causing a letter alleging that the private respondent does not have requisite experience of teaching, which is sine quo non to the appointment to such post.

Since the said letter was kept in suspended animation and as no decision was taken thereupon, the petitioner approached the Tribunal seeking a Mandamus to quash the candidature of the private respondent as he lack requisite qualification earmarked for appointment to such post. The Tribunal disposed of the said application solely on the ground that the appointment letter has not been issued to the private respondent by the authority and, therefore, the cause of action appears to be prematured. However, the Tribunal was critical on the issue that despite the

representation raising a serious question filed by the petitioner, the authority has not taken any decision and directed the Director, AIIMS, Kalyani to consider the said representation within six weeks from the date of communication of the order.

We do not find any infirmity and or illegality in the said order as the Mandamus cannot be issued on mere apprehension or presumption unless the right is affected by an action of the authority. Even if the person has been shown in the panel yet at the time of verification of the documents relating to essential qualification, the authority may take a decision.

Since no decision has been taken as yet, we do not find any justification in the stand of the petitioner that the Mandamus of such nature should be issued on mere presumption. However, we cannot overlook the fact that despite the timeline fixed by the Tribunal, the representation has not been considered as yet.

We, therefore, direct the Executive Director, AIIMS, Kalyani to consider the representation filed by the petitioner and dispose of the same within two weeks from the date of communication of this order by recording proper reasons.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

