

(1986) 02 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No"s. 12337, 12515 and 12516/84

S. Sundararaj, M. Rajan Isaac, J.A.G. Rajadurai

APPELLANT

Vs

Hindustan Teleprinters Ltd. and Another

RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1988) 1 LLJ 53

Hon'ble Judges : S. Natarajan, J

Bench : Single Bench

Judgement

1. Petitions under Article 226 of the Constitution of India, praying that in the circumstances stated therein, and in the respective affidavits filed

therewith, the High Court will be pleased to issue Writs of Mandamus directing the first respondent in all the petitions to consider the petitioner in

each of the petitions to the post of General Manager (Production) for the Madras unit of the first respondent in the place of the second respondent

herein.

These Writ Petitions coming on for hearing on Friday the 29th day of November, 1985, Fridays the 6th and 20th days of December, 1985, and

Friday the 3rd day of January 1986, upon persuing the petitions and the respective affidavits filed in support thereof, the orders of the High Court,

dated 11th December 1984, W.P. No. 12337 of 1984 and dated 18th December 1984 in W.P. Nos. 12515 and 12516 of 1984 and made

herein, and the Counter and reply affidavits filed herein and the records relevant to the prayer abovesaid and comprised in the return of the first

respondent in all the Writ Petitions to the Writs made by the High Court, and upon hearing the arguments of Mr. B. R. Dolia of Aiyar and Dolia,

Advocates for the petitioner in each of the Writ Petitions and of Mr. M. R. Narayanaswami for Mr. N. Balasubramanian, Advocate for the First

Respondent in all the Writ Petitions and of Mr. S. Jayaraman, Advocate for the 2nd respondent in all the writ petitions and having stood over for

consideration till this day, the Court made the following

COMMON ORDER

The appointment of Thiru N. R. Pancha-pakesan (second respondent) as General Manager (Production) of the first respondent Company has

given rise to these three writ petitions filed by three officers of the first respondent who also staked their claim for appointment to the post of

General Manager (Production). The prayer in each petition is for the issue of a writ of mandamus to the first respondent directing it to consider the

case of the respective petitioner for appointment as General Manager (Production) in the Madras Unit of the first respondent Company. Writ

Petition No. 12515 of 1984 has been filed by Thiru M. Rajan Issac, Deputy General Manager (Production), Electric Typewriter Project and

officiating General Manager (Production). Writ Petition No. 12516 of 1984 has been filed by Thiru J. A. G. Rajadurai, Manager (Works) and

Writ Petition No. 12337 of 1984 has been filed by Thiru S. Sundarraraj, Manager (Materials Management), of the first respondent company, a

Governemnt of India Undertaking.

2. Consequent on the post of General Manager (Production) falling vacant, the first respondent called for applications from suitable candidates to

fill up the post. Five external candidates including the second respondent and three internal candidates, viz. the three writ petitioners, submitted

their applications. Out of the five external candidates, one did not turn up for interview. The Selection Committee comprised of the Chairman-cum-

Managing Director of the Company (hereinafter referred to as the Chairman) and five Directors, viz. the Additional Secretary of the Ministry of

Communications, Member (Finance), of the P. & T. Board, Member (Technical Development) of the P. & T. Board, Mr. Shenoy, Director of the

Electronics Research and Development Establishment, Ministry of Defence, Bangalore and Mr. V. K. Gupta, an Industrial Consultant. The

Selection Committee interviewed the candidates on 27th November 1984. After assessing the merits and qualifications of the candidates, the

Selection Committee placed the second respondent as No. 1 and Mr. Rajan Isaac as No. 2 in the Selection list and in terms of the said list, the

second respondent was appointed as General Manager (Production). The appointment of the second respondent is assailed by the writ petitioners

on various grounds.

3. The grounds on which the appointment of the second respondent is challenged are as under :

(1) Though the advertisement calling for applications appeared in the newspapers only on 25th July 1984, the Chairman had sent requisitions to

Indian Telephone Industries and Bharat Electronics Ltd. (in which concern the second respondent was working) as early as in April 1984. After

findings out that no officer in those Undertakings possessed the requisite qualifications for being appointed as General Manager (Production) of the

first respondent, the Chairman worded the advertisement in such a manner as to provide for granting of exemptions to candidates who did not

possess the requisite qualifications.

(2) In order to favour the second respondent with the appointment, the Chairman had introduced a clause in the advertisement to the following

effect : ""Qualifications and experience are relaxable if found otherwise suitable."" The Chairman had thus paved the way even in the beginning for

the second respondent being selected in spite of his total lack of qualifications for appointment.

(3) The second respondent is not a graduate in engineering and, in fact, he does not even possess a diploma in engineering. He does not also

possess the prescribed work experience. He was controlling even two hundred employees and he was not holding a high post which permitted

reporting to top level management alone.

(4) In selecting the second respondent, first respondent has violated the selection policy formulated by the Government of India. As per the policy,

unless markedly better candidates are available from outside"" the vacancies should be filled up by promotions from within a public enterprise. The

second guideline to be followed is that the responsibility for selecting General Managers should be delegated to the Board of the company and the

Board should set up a committee of not less than four persons of which the Secretary of the Public Enterprises Selection Board should also be a

member so that in claims of candidates from other enterprise are not overlooked. The third guideline prescribed that an internal candidate should

be preferred provided his merit equals that of the best candidate from outside; if no such internal candidate is available, then a candidate from

another public enterprise should be preferred and only if no such candidate is available, resort should be had to other sources like the Government,

private sector etc. All these guidelines have been violated by the first respondent.

(5) The Chairman had taken a personal interest in the appointment of the second respondent even though the latter did not possess any

qualifications to be appointed to the post in question. The Chairman was a permanent employee of Bharat Electronics Limited, from 1961 till

February 1984 and only thereafter, he became the Chairman-cum-Managing Director of the first respondent. As the second respondent was also

an employee of Bharat Electronics Limited, the Chairman had gone out of the way to appoint him to the post in question. That was why the

Chairman had first made enquiries of Bharat Electronics Limited and another concern to find out if anyone was suitable in those companies, for

being appointed as General Manager of the first respondent. When the Managements replied that no one qualified was available the Chairman saw

to it that the advertisement relating to the post carried a clause that in suitable cases relaxation would be given in the matter of qualifications and

experience. The second respondent had not sent his application in time, but had sent in belatedly; even so, the Chairman had directed the office to

entertain the application. The office would not initially send an interview card to the second respondent because he did not have the requisite

qualifications, but the Chairman directed the office to send an interview card to him.

(6) After the interview, one of the Directors openly appreciated the performance of the internal candidate, but surprisingly, the second respondent

was selected to the post and the order of appointment was issued to him. The selection itself has not been made by proper method, because

no rating was made regarding the performance in viva voce.

(7) The second respondent was over-aged when he applied for the post. The advertisement prescribed the age of qualification as 45 to 50 years,

but the second respondent had completed 50 years of age, but even so, the

Chairman had entertained his application and had also seen to it that he was selected.

(8) Contrary to the terms of the advertisement the second respondent had secured appointment in the first respondent retaining his lien in Bharat Electronics Limited. This breach of condition also vitiated the appointment.

(9) Each of the petitioners is possessed of the educational qualifications and experience-requirements stipulated in the advertisement for the post.

These factors, coupled with their status as internal candidates, entitled them to selection in preference to the second respondent. Hence their non-selection amounts to arbitrary rejection of their claims.

4. On behalf of the first respondent a counter-affidavit has been filed in each petition by Mr. R. Sundaram, Manager (Administration) of the first respondent. As petitioners took the stand that the Manager (Administration) is not competent to file the counter affidavit because he had not

participated in the interview, the Chairman has filed a supporting affidavit and has adopted in full the counter affidavit filed by the Manager

(Administration). He has stated that because he had to be away on official work from Madras during the period 13th January 1985 to 17th

January 1985, he had authorised the Manager (Administration) to swear to the counter-affidavit.

5. In the counter-affidavit, the various grounds of attack by the petitioners have been met. It is stated that the advertisement for the post was made

in the usual manner in which such advertisements are made, that no procedural error had been committed in constituting the Selection committee or

in selecting the second respondent, that the second respondent is not over-aged and his application was given in time, but was sent belatedly that

he had the requisite "experience-qualification" to be appointed to the post, that the relative merits of the candidates were correctly and carefully

evaluated by the Selection Committee and after such evaluation they found the second respondent was the best suited candidate for appointment,

that Mr. Rajan Isaac was the next best suited candidate, that accordingly the Selection list was prepared and the appointment order was given to

the second respondent and that it is not true or correct to say that the Chairman was personally interested in the second respondent and on

account of that he had shown favouritism to the second respondent and given

him the appointment.

6. The second respondent has filed a separate counter-affidavit wherein he has set out his technical qualifications, work-experience gained by him

and the post of responsibility he had held in Bharat Electronics Limited.

7. The grounds of attack on the appointment of the second respondent in W.P. No. 12516 of 1984 and W.P. No. 12337 of 1984 are identical.

The counter-affidavits filed by the first respondent in those petitions are also the same effect as the counter-affidavits filed in W.P. No. 12515 of

1984. Hence it is not necessary to set out the contents of the affidavits and counter-affidavits in those petitions.

8. What falls for consideration in the writ petitions is whether the second respondent had been selected in an arbitrary manner to the post of

General Manager (Production) in the first respondent concern in preference to the petitioners herein.

9. At the outset, Mr. M. R. Narayanaswami, learned counsel for the first respondent submitted, that since the petitioners seek only a mandamus

for consideration of their case for appointment and since all the petitioners were called for interview and their qualifications were evaluated and

their suitability assessed, the petitions do not service any longer and they are liable to be dismissed. Mr. Dolia, learned counsel for the petitioners,

stated that whatever may be the prayer contained in the writ petitions, it is always open to the Court to mould the appropriate relief to the

petitioners if the court is satisfied that the first respondent had unjustly failed to select any one of the petitioners and has shown favouritism in

selecting the second respondent to the post of in question. Since the petitions were argued for a considerable length of time. I think it is too late in

the day for the first respondent's counsel to seek a dismissal of the petitions on the technical ground that the relief sought by the petitioners has

already been secured by them.

10. Taking up, now, for scrutiny the various grounds put forward by the petitioners for assailing the selection of the second respondent for the post

of General Manager (Production), the first grievance is that while the advertisement for the post was made only in July in 1984, the Chairman had

sent requisitions to the Indian Telephone Industries and Bharat Electronics Ltd., even in the month of April 1984 to find out if there were qualified

officers on their pay-rolls who could be drafted to the first respondent company as General Manager (Production). The first respondent would say that Public Sector undertakings constitute a pool and therefore, it is common practice for one undertaking to find out from sister undertaking whether suitable candidates are available in their set-up for appointment to a post in the undertaking making the enquiry. It is therefore stated that it was not with any ulterior motive the Chairman had sent requisitions to the two undertakings named above to find out whether suitable candidates were available for the post to be filled. Having regard to the various other materials available in the case, I do not think it necessary to make a detailed examination of this ground attack of the petitioners. I will therefore proceed on the basis that the requisitions that were sent in April 1984 had been made bona fide in conformity with the practice generally followed by Public Sector undertakings when they are in need of a qualified hand to fill up an officer's post in their set-up.

11. The next grievance voiced forth is that in the advertisement which was made in the newspapers on 25th July 1984, a special clause had been introduced providing for relaxation of qualifications pertaining to education and experience. The petitioners would say that such a clause had been deliberately introduced to facilitate the selection of the second respondent as, without such relaxation, the second respondent could never be selected. The first respondent has controverted this charge and would say that it is the usual practice to introduce such relaxation clause when any advertisement is made by big concerns to call for applications for senior post and that of the first respondent has not made any innovation in this instance alone. To substantiate its statement, the first respondent brought to my notice a copy of an earlier advertisement made by it to call for applications for various posts such as Senior System Analyst, Senior Safety Officer, Senior Purchase Officer etc. The advertisement is contained in page 67 of the Typed Set filed by the respondents. In that advertisement also, a relaxation clause similar to the one under consideration is found. In view of this position, it may not be possible to hold that the relaxation clause had been thoughtfully introduced by the first respondent in order to facilitate the appointment of the second respondent even though he did not possess the requisite qualifications.

12. Now, we come to the main ground of attack of the petitioners, viz., that the second respondent is not qualified either education wise, experience-wise or even age-wise to be selected for the post of General Manager (Production) but, nevertheless, he has been chosen on account of favours shown to him.

13. As per the advertisement, an applicant for the post of General Manager (Production) should have an educational qualification of a bachelor's degree in engineering (mechanical/electrical) and in the manner of experience, he must have a minimum of ten year's experience in a senior position in light engineering industry reporting to top level management. Apart from other requirements such as leadership qualities, ability to guide a team of middle level management personnel of different disciplines etc., the applicant must have the ability to control, monitor and co-ordinate production involving about 1500 workers. So far as age limit is concerned, the prescribed age limit is 45-50 years. The advertisement stipulated that in the event of selection, the selected candidate should forfeit, his lien over his present job. Lastly, a time limit of ten days from the date of publication of the advertisement was prescribed for sending the applications.

14. The petitioners would say that the second respondent has not satisfied any of the requirements or qualifications, but even so, he has been selected by the first respondent, and as such, a special treatment has given to him.

15. Taking up these matters one by one, it is common ground that the second respondent does not possess a degree or even a diploma. It is, however, said that the he had passed the Inter Science in first class (which perhaps would mean Intermediate course) and thereafter he had successfully completed four years' apprenticeship in the Government Cordite Factory, Aravankadu. He had also passed the relevant departmental tests and had been occupying several posts set apart for engineers in Bharat Electronics Limited. He was selected and appointed as Junior Engineer in Valves Division and subsequently, he was promoted to key posts as Manager of Receiving Valves Division and as Deputy General Manager of Television Picture Tubes Department and all through he was treated on par with engineering graduates. It is further claimed that the second respondent had also been sent for specialised training in factories situate

in Holland and Japan and he had acquired considerable expertise by reasons of the training undergone by him in those companies. The respondents would, therefore, say that even if the second respondent does not possess a degree in engineering, he has acquired vast experience and the practical experience gained by him in the managerial posts held by him entitles him to be ranked along with degree holders.

16. So far as experience is concerned, the petitioners lay stress upon the fact that what is required is minimum ten years' experience in a senior position in light engineering industry reporting to top level management. According to the petitioners, the second respondent was not holding such a position and he was not reporting to top level management. They advert to a publication made by the Director General of the Bureau of Public Enterprises, wherein persons reporting to top level management in various public sector undertakings are listed. In that publication, we find that the petitioner, Thiru Rajan Isaac, is included in the category of persons reporting to top level management, but the second respondent is not so included. The respondents would say that the second respondent has more than the years of experience in senior positions reporting to top level management, that he has been reporting a department which contained 24 executives and 700 workmen and subsequently, another department having 30 executives and 550 workmen and that he was in charge of a section which was entrusted with the task of producing television picture tubes for the value of Rs. 10 crores. The respondents would also lay emphasis on the fact that Bharat Electronics Limited is a Schedule B Organisation and it is eight to ten times bigger than the first respondent company which is only a Schedule C Organisation. Whatever may be the claim of the second respondent to seek recognition of his qualifications and experience, the fact remains that he has not been recognised by the Bureau of Public Enterprise as a senior executive reporting to top level management. It may be that Bharat Electronics Limited is a much bigger Organisation than the first respondent, but the Bureau of Public Enterprise has not applied different yard-sticks to public sector undertakings on the basis of the size of the set-up. Thus, we find that in the matter of experience also, the second respondent does not stand on par with one of the petitioners viz. Thiru Rajan Isaac.

17. Yet another point attack relates to the age of second respondent. While the advertisement prescribes the age limit of the applicant as 45-50 years, the second respondent was aged 50 years and 8 months on the date of his application. Mr. Dolia contended that as per the advertisement, the selection was restricted to persons who had completed 45 years of age, but not completed 50 years on the date of the application, and hence the second respondent was admittedly over-aged on the date of the application. The respondents would say that the term "50 years" would be applicable till the second respondent completed his last 51st year. To convert this statement, Mr. Dolia referred to certain books by way of authority. He referred to the New Encyclopaedia Britannica - Macropaedia, Volume I, where references to age have been made as 47.9 years for males and 51.1 years for females etc. etc". He also referred to a table published by the U.S. Public Health Service to show the mean blood pressure level in adults according to age and sex. The table refers to age-groups of 18-24, 25-34, 35-44 etc. etc. Mr. Dolia cited Fernandes, Section Superintendent Mormugao v. Mormugao Port Trust 1985 AISLJ 439, and R.K. Goswami Vs. K.M. Raval and Others, , to content that a person who had completed 50 years of age cannot respond to the advertisement made by the first respondent. In the former case, it was held that the age limit of 30 years prescribed for appointment of Assistant Traffic Manager would not entitle a person who is aged more than 30 years to be appointed. In the latter case it was held that a forest guard who had crossed the age limit of 25 years fixed for the post of 14 days would be over-aged. His appointment was, however, sustained by the Court on the ground that the appointing authority had given the appointment with full knowledge of the appointee exceeding the age limit by 14 days and as such it must be held that the authority had relaxed the qualifications pertaining to age in favour of the candidate.

18. Even in the matter of sending the application the advertisement stipulates that the application should have reached the first respondent on or before 31st August 1984, but the second respondent's application has reached the Chairman only to 14th September 1984 and in spite of the lateness of the application he has been called for the interview, This concession, according to the petitioners, is yet another circumstances which

establishes the bias of the Chairman in favour of the second respondent. The first respondent would answer this charge by saying that the second

respondent had submitted his application well within time, but his erstwhile employer, viz. Bharat Electronics Limited, had delayed forwarding the

application and hence the second respondent should be penalised for the lapse of his erstwhile employer.

19. Leaving the last ground of attack aside, if we examine the other criticisms levelled by the petitioners, it may be seen that they cannot be brushed

aside as irrelevant or inconsequential ones. Neither in the matter of age nor in the matter of education and experience does the second respondent

fulfil the terms stipulated in the advertisement. Therefore, it follows that he cannot be given the appointment unless the exemption clause is resorted

to, and it is common ground that exemptions were, in fact given to the second respondent and he has accepted. But, when it comes to the

question of age, I find that there is no provision at all for relaxing the clause pertaining to age restriction. Though the respondents would say that the

second respondent ought to be treated as being 50 years of age till he completes the 51st year, I do not think the explanation can be accepted.

The stipulation pertaining to age can only be taken to mean that an applicant should have completed 45 years and not completed 50 years when he

submitted the application. Admittedly the second respondent was over-aged when he made the application. The relaxation clause does not

empower the Selection Committee to relax the age restrictions for a candidate.

20. It is in this background, we must examine the other contentions of the petitioners. They would say that the selection policy formulated by the

Government lays down that "unless markedly better candidates are available from outside," the vacancies should be filled up by promotions from

within a public sector enterprise. In view of this policy, it needs consideration whether any of the petitioners was not suitable for the post and

whether the second respondent was a markedly better candidate when he was given the appointment. It was argued that so far as the petitioners.

Mr. Rajan Isaac and Mr. Rajadurai are concerned, they were only 43 and 44 years of age on the date of their application and hence they were not

qualified to apply, but even so, the rule was relaxed and they were called for interview as they are internal candidates. As they were under-aged at

the relevant time, we need not take into consideration the case of those two persons. But, as regards Mr. Sundararaj, he satisfied all the requirements, viz., qualifications, experience and age. As such, he can claim preference as an internal candidate. But, even so, for no recorded reason, he has not been selected, and only Mr. Rajan Isaac has been given the second place. The respondents would say that an internal candidate is entitled to selection only if "his rating measures up to the best of the outside candidates". It is therefore urged that none of the petitioners measured up to the rating of the second respondent, and hence they could not be selected even though they were internal candidates. But, we have already seen that the second respondent cannot be said to be a person of outstanding merit and ability, entitling him to better rating than the internal candidates. In Union of India (UOI) Vs. Mohan Lal Capoor and Others, the Supreme Court pointed out that if a Selection Committee does not state the reasons which would disclose how the record of each officer superseded stood in relation to the record of others who were to be preferred, it would be very difficult for a Court to find out the factors which had impelled the selection authority to prefer some candidates and reject the others. In the instant case, except assigning ranks to the second respondent and Mr. Rajan Isaac, the Selection Committee has not given any reason for giving relaxation of condition relating to education, experience and age to the second respondent and for placing Mr. Rajan Isaac as No. 2 in the selection list and not assigning any ranks for the other candidates. I therefore find considerable force in the contention of the petitioners that the selection is vitiated by arbitrariness.

21. Mr. M. R. Narayanaswami, learned counsel for the respondents, argued that the petitioners have not established any mala fides against the Chairman or the members of the Selection Committee and hence they are not entitled to impugn the selection of the second respondent. In answer to this, Mr. Dolia referred to Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, where it was held that malice in law is different from malicious intent and that "malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally, but without just cause or excuse or for want of reasonable or probable cause." The ratio can well be applied to this case. The petitioners need not prove mala

fides or malicious intentions. It is enough if they prove arbitrariness and malice in law to assail the selection of the second respondent.

22. In the course of the arguments, it was urged that besides the Chairman, the Selection Committee consisted of high-ranking Government official

and an industrialist, that they would have therefore brought to bear an independent mind in the selection of the candidates at the interview and, as

such, due weight should be given to the ratings given by them to the two candidates included in the selected list. I am not, for a moment, doubting

or disputing the bona fides of the members of the Selection Committee. But, it has to be pointed out that except the Chairman the other members

of the Selection Committee could not have known anything about the capacity and excellence of the second respondent. In such circumstances,

can it be said that the short interview the Committee had held for each candidate would be adequate for the Committee to give the first rank to the

second respondent and also grant relaxation of the required qualifications stipulated for the post ? I may, at this juncture, usefully refer to the

following passage occurring in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, and point out that even where selection

have been made by eminent persons, they cannot be upheld unless the requirements of law are satisfied. The relevant observation of the Supreme

Court are as follows P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, :

It was urged that once it is conceded that as the power of selection and appointment vests in the ICAR (Indian Council of Agricultural Research),

the Court should not usurp that power merely because it would have chosen a different person as better qualified. (See : State of Bihar v. Dr. Asis

Kumar Mukherjee). Undoubtedly, the Court must look with respect upon the performance of duties by experts in the respective fields as has been

said in Dr. M. C. Gupta's case. However the task of ushering a society based on rule and law is entrusted to this Court, and it cannot abdicate its

functions. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification pertaining to

experience, the entire process of selection of the sixth respondent was in contravention of the established norms prescribed by advertisement and

power of the Selection Committee and procedure of fair and just selection and equality in the matter of public employment and to rectify resultant

injustice and establish constitutional value this court must interfere. Selection of respondent No. 6 is contrary to rules and others and in violation of prescribed norms of qualification. He was ineligible for the post when selected. His selection and appointment would be required to be quashed and set aside.

23. On behalf of the respondents it was argued that the second respondent has not only taken charge as General Manager (Production) pursuant to his appointment, but he has also surrendered his lien in Bharat Electronics Limited and as such, it will be most inequitable if his appointment is to be set aside. Learned counsel further argued that since the petitioners have not amended the prayer in the writ petitions and sought a writ of certiorari to quash the appointment, the petitioners cannot be granted any relief in these petitions even if their grievance is genuine. Controverting this argument, Mr. Dolia stated that when once the Court is satisfied that the second respondents appointment suffers from the vice of arbitrariness, then the Court can grant appropriate relief to the petitioner without being obsessed by the nature of the relief sought in the writ petitions. In support of this argument, Mr. Dolia cited *S. Swaminathan v. Tamilnadu Housing Board* 1974 I LLJ 349. It was held in that case that though the petitioners who were Supervisors had not put in the requisite number of years of service to be promoted as Assistant Engineers, yet their grievance regarding the promotion of those junior to them could be sustained by the Court and a writ of declaration can be issued holding the promotion of respondents 2 to 12 to be in violation of the terms of the regulations, and further, a mandamus can also be issued to fill up the posts according to the regulations. *Workmen of United Bleachers (Private), Ltd. Vs. United Bleachers (Private), Ltd. and Another*, was also cited for the proposition that the power of the High Court under Article 226 is wide enough to give appropriate relief to a successful party even if he had not asked for that specific relief in the writ petition. The contentions of Mr. Dolia are fully sustainable, because it is a well established principle of law that a successful party should not be deprived the benefit of his action on account of technicalities. Consequently even if a mandamus cannot be issued to the first respondent to appoint one of the petitioners to the post of General Manager (Production), this Court can quash the order of appointment in favour

of the second respondent and call upon the first respondent to fill up the post afresh after calling for applications from suitable candidates for the post of General Manager (Production). The plea of the counsel for the respondents that the second respondent has surrendered his lien in Bharat Electronics Limited and therefore he would be left in the lurch if his appointment is set aside, cannot be treated as a relevant factor, because, on the date he applied, he had kept his lien in tact. As such, if during the pendency of the proceedings, he had surrendered his lien, he has only to hold himself responsible for the situation.

24. In the result, the order of appointment in favour of the second respondent will stand set aside and there will be a rule in the writ petitions to the said effect. To this extent the petitions will stand allowed. There will be no order as to costs in all the writ petitions. Three months' time is given to the first respondent for advertising for the post once again and interviewing the applicants and making selection. Till then, the first respondent may keep the second respondent in service, if his services are considered necessary.