

Supreme Court of India

Bimla Nand And Others vs State Of Bihar And Others on 23 March, 1993

Equivalent citations: AIR 1994 SC 773, (1995) ILLJ 566 SC, 1994 Supp (3) SCC 753

Bench: A Ahmadi, S Bharucha

JUDGMENT

1. This appeal is directed against the judgment of the High Court of Patna in Civil Writ Jurisdiction Case No. 6581 of 1989, whereby it upheld the validity of the 'Assistants of the Secretariat and Attached Offices Joint Cadre Ordinance, 1989' (Bihar Ordinance No. 9 of 1989) which has since become an Act. By the said ordinance which was brought into effect from 30th August, 1988, provision was made for the Constitution of a joint cadre of Assistants and others. Section 9 thereof provided : 'Notwithstanding anything contained to the contrary in any judgment, decree or order of any court or any rule or circular all appointments and promotions of Assistants, to higher posts and their confirmation in various Secretariat departments and attached offices made up to 30th August, 1988 on the basis of extant Government circulars/rules etc. shall be deemed to have been validly made as if the Government decision dated the 27th May, 1967, was not in existence and shall be deemed that such a decision was never taken and that circulars pursuant thereto were never issued'. The High Court came to the conclusion that the Cabinet decision of 27th May, 1967, having been thus effaced, no right would flow under that decision and even Court orders granting Writs of Mandamus for implementation of that order could not invalidate the Act. Admittedly prior to the Cabinet decision dated 27th May, 1967 recruitment was centralised and thereafter the selected candidates were allocated to different departments and they had to then look to that department for their promotions. This was the position under the rules in force prior to 27th May, 1967. As this led to fortuitous benefits to a few there was a demand for a joint-cadre of Assistants with a common seniority list. In principle the Cabinet took a policy decision in that behalf and communicated the same to Heads of Departments stating that subsequent promotions will not be valid. Only the Cabinet decision was communicated but no formal rule was made nor was any amendment made in the extant rules. Despite this as the extant rules continued to have force department wise promotions continued. Six years later the High Court granted the mandamus to implement the decision of 27th May, 1967 and subsequent orders were also made following the said decision. To protect the promotions made between 1967 and 1988 and to overcome the difficulty arising from court orders Section 9 was enacted.

2. The main contention was that the decision of 27th May, 1967 created a vested right traceable to Articles 14/16 which could not be taken away by a statutory provision such as Section 9 of the Act. The High Court negatived the contention holding it was merely a policy decision which was not translated into a rule as several objections were received which had to be sorted out but the mandamus issued by the High Court compelled implementation. Once the decision of 27th May, 1967 was effaced by the Ordinance/Act, the question of implementing that decision did not survive. Having heard learned Counsel for the appellants at length and having perused the case law to which our attention was drawn, we are of the view that the conclusion reached by the High Court by the judgment under challenge does not suffer from any infirmity requiring interference in appeal. We, therefore, see no merit in this appeal and dismiss the same with no order as to costs.