

**SUPREME COURT OF INDIA**

Haryana Tourism Corporation Ltd.

Vs.

Fakir Chand

C.A.Nos.449 with 450-455 of 2000

(K. G. Balakrishnan and P. Venkatarama Reddi JJ.)

14.10.2003

**JUDGEMENT**

**K. G. Balakrishnan, J.**

1. Appellant-Haryana Tourism Corporation Limited in these appeals is a Government-owned company incorporated under the Companies Act. The appellant-Corporation was engaged in the tourism-related activities in the State of Haryana. As part of its activities, the appellant-Corporation started various fast food centres and tourist complexes in different parts of the State and utilized the services of these respondents to meet the day-to-day requirements of work. The respondents in these appeals were engaged either as Kitchen Helper, Mali or Sweeper and according to the appellant-Corporation, these respondents were given daily wage appointments. The fast food centres/tourist complexes in question were started on 8-11-1988. The appellant alleged that soon after these fast food centres and tourist complexes were started, many of them started running into losses and in 1991, the State Govt. re-considered the matter and took a policy-decision to discontinue the running of some of them and that the appellant-Corporation returned these outlets to the Transport Department. This change of policy, the appellant stated, necessitated the retrenchment of the respondent-workmen and accordingly the services of the respondent- workmen were terminated in the months of August and October, 1991. The respondents challenged the termination of their services and the matter was referred to the Labour Court under the Industrial Disputes Act, 1947. The Labour Court, by its award, directed reinstatement of the respondents in service with 25 per cent back wages. The appellant-Corporation challenged the award of the Labour Court before the High Court of Punjab and Haryana, but the High Court declined to interfere with the award passed by the Labour Court. The judgment of the High Court is challenged before us by the appellant-Corporation.

2. We heard Shri Sudhir Walia, learned Addl. Advocate General for the appellant-Corporation and also counsel for the respondents. Shri Walia submitted that these respondents were engaged on daily wage basis and their services were terminated when the policy of the State Govt. was reviewed and the appellant-Corporation then entrusted most of the outlets to the Transport Department. The counsel for the respondents disputed this fact.

On the other hand, it was alleged that the appellant-Corporation opened fresh fast food centres and started engaging new employees.

3. It is important to note that some of the fast food centres, which were under the management of the appellant-Corporation were entrusted to the Transport Department and there was a change of policy made in the month of September, 1991. This plea was raised by the appellant before the Labour Court when one of the employees of the appellant-Corporation who was engaged by them as a Sweeper in a catering service station at Hissar, challenged his termination order. The plea of the appellant-Corporation that there was a change of policy in September, 1991, was accepted by the Labour Court and the Labour Court also relied on Ex. M-1 copy of the minutes of the meeting dated 8-11-1988 of the State Govt. for starting catering services at the bus stands and also Ex. M-3 copy of the minutes of the subsequent meeting dated 5-9-1991 for taking a decision for closing down the said services and for handing over the possession of the bus stands to the Transport Department. But, a specific plea was not raised by the appellant- Corporation in these matters. Certain other facts are, however, relevant to be noted for the purposes of these cases.

4. The respondents herein were engaged to work on daily wage basis. They were not recruited through Employment Exchange or through any other accepted mode of selection. It is also not known whether there was any advertisement calling for applications for appointment of these respondents. None of the respondents was regularized in service. All of them continued as daily wage employees and their services were terminated as early as 1991.

5. It is submitted on behalf of the appellant-Corporation that some of the fast food centres and tourist complexes of the appellant-Corporation are still being run by incurring losses and that there are a large number of workers already available for running them. It was submitted that if these respondents are directed to be reinstated, it would only lead to excess manpower, disproportionate to the actual requirement. It is, however, to be noted that these respondents had obtained an award for reinstatement as the appellant- Corporation did not raise appropriate contention before the Labour Court. However, it is clear that in other cases the Labour Court accepted the plea raised by the appellant-Corporation. These respondents, as stated earlier, were mostly working as Cook, Cleaner, Sweeper and Gardener, etc.; and by the nature of their work, they must have been doing similar work elsewhere if not regularly, at least intermittently after their services were terminated.

6. Having regard to the above facts we do not think that the direction to reinstate them would be a just and equitable solution at this distance of time.

7. In the above circumstances and taking into account the amount of daily wages that were being paid to them, we feel that the appellant-Corporation can be directed to pay a sum of Rs. 70,000/- to each of these respondents by way of compensation in lieu of reinstatement. We direct that the said amount of compensation shall be paid within a period of two months, failing which the award passed by the Labour Court for reinstatement would revive and these respondents would be at liberty to enforce the same. With these directions, the appeals are disposed of. There will be no order as to costs. Order accordingly.