

# Mukeshbhai Rangindas Gondalia vs Rajkot Municipal Corporation on 8 January, 2020

**Bench: L. Nageswara Rao, Hemant Gupta**

1

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 72-74 OF 2020  
(@ SLP (CIVIL) NOS. 31397- 31399 OF 2018)

MUKESHBHAI RANGINDAS GONDALIA

..

Appellant(s)

Versus

RAJKOT MUNICIPAL CORPORATION

..

Respondent(s)

O R D E R

Leave granted.

The Appellant was appointed on 16.12.1990 as a Peon in the Respondent-Corporation. His service was terminated from 1.6.1994 without issuance of any notice or payment of retrenchment compensation. He raised an industrial dispute which was referred to the Labour Court under Section 10(1) of the Industrial Disputes Act, 1947 ('the ID Act'). The reference filed by the Appellant was partly allowed and the action of the Respondent-Corporation Reason: Appellant was declared as illegal and void. A direction was given to the Respondent to reinstate the Appellant with continuity of service with 25% back wages within a period of one month from the date of publication of the award.

The writ petition filed by the Respondent- Corporation challenging the award of the Labour Court was partly allowed and the direction given by the Labour Court to the Respondent-Corporation to grant continuity of service was set aside. However, the Respondent was directed to reinstate the Appellant and to pay 25% of the back wages as directed by the Labour Court. Aggrieved by the judgment of the learned Single Judge, the Appellant filed an appeal which was dismissed. The High

Court was of the opinion that the initial appointment of the Appellant on daily wage basis was on sympathetic grounds in view of the ill health of his father who was serving in the Corporation without following any procedure for regular appointment. According to the Respondent-Corporation, the termination of the service of the Appellant was attributable to misconduct and behaviour on the part of the Appellant.

Learned counsel for the Appellant submitted that the reinstatement of the Appellant with back wages of 25% as ordered by the High Court was correct. Once the Appellant was reinstated with back wages, he could not have been deprived of continuous service. Learned counsel for the Respondent relied upon a judgment of this Court in J.K. Synthetics Ltd. Versus K.P. Agrawal [(2007(2) SCC 433)] to submit that the Courts or Tribunals directing reinstatement should apply their judicial mind to the facts and circumstances of the case to decide whether “continuity of service” and/or “consequential benefits” should also be directed.

After considering the submissions made on behalf of the parties, we are of the opinion that the Appellant is entitled for continuity of service on his reinstatement. The High Court was persuaded to conclude that the Appellant was not entitled for continuity of service in view of his appointment being irregular which cannot be a ground for rejection of relief to the Appellant. The dispute raised by the Appellant before the Labour Court was violative of Section 25(f) of the ID Act. Moreover, the respondent failed to raise this issue before the Labour Court.

In view of the above, we set aside the judgment of the High Court and restore the award passed by the Labour Court. The appeals are, accordingly, allowed.

Pending application(s), if any, shall stand disposed of.

.....J. ( L. NAGESWARA RAO ) .....J. ( HEMANT GUPTA ) New Delhi,  
Dated: January 8, 2020.

ITEM NO.39

COURT NO.11

SECTION III

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 31397-  
31399/2018

(Arising out of impugned final judgment and order dated 24-04- 2018 in LPA No. 265/2017 06-09-2018 in MCA No. 1/2018 06-09-2018 in CA No. 2/2018 passed by the High Court Of Gujarat At Ahmedabad) MUKESHBHAI RANGINDAS GONDALIA Petitioner(s) VERSUS RAJKOT MUNICIPAL CORPORATION Respondent(s) Date : 08-01-2020 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO HON'BLE MR. JUSTICE HEMANT GUPTA For Petitioner(s) Ms. Prerna Chaturvedi, Adv.

Ms. Manju Jetley, AOR For Respondent(s) Mr. Jatin Zaveri, AOR Mr. Neel Kamal Mishra, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeals are allowed in terms of the Signed Order. Pending application(s), if any, shall stand disposed of.

(GEETA AHUJA)  
COURT MASTER (SH)

(ANAND PRAKASH)  
BRANCH OFFICER

(The Signed Order is placed on the file)