

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2072 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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SHIRISHBHAI R PATEL

Versus

GUJARAT KRUSHI UNIVERSITY  
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Appearance:

1. Special Civil Application No. 2072 of 1996  
MR DS VASAVADA for Petitioner No. 1  
MR DG CHAUHAN for Respondent No. 1  
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Vasavada for the petitioner workman and Mr. Chauhan, learned advocate for the respondent. In this petition, the petitioner has challenged the award made by the labour Court, Anand in Reference No. 460 of 1992 (Old No. 275 of 1988) dated

June 20, 1995 wherein the labour court has directed the respondent University to reinstate the petitioner on his original post with continuity of service but without back wages for the intervening period within one month from the date of publication of the award. The workman has challenged the award by this petition insofar as it relates to refusal of the back wages for the intervening period.

Learned advocate Mr. Chauhan appearing for the respondent University has submitted that pursuant to the award of reinstatement made by the labour court, the respondent university has, by order dated July 14, 1995, reinstated the petitioner in service with continuity. This order of reinstatement was not objected by the petitioner at the time of accepting the same. He further submitted that while accepting the order of reinstatement, the petitioner has not made any endorsement that subject to his right to challenge the award in question qua back wages for the intervening period, he is accepting the order of reinstatement. Therefore, the workman has accepted the award of reinstatement without objection which amounts to compliance of the award in question and, therefore, this petition is not maintainable. He submitted that the petition was filed by the workman in February, 1996 after his reinstatement pursuant to the award in question and, therefore, same is not maintainable. He further submitted that once the award in question has been implemented and executed by the respondent university by ordering his reinstatement and such reinstatement was accepted by the workman without raising any objection qua back wages, then, the petitioner is estopped from challenging that part of the award. In support of his submissions, he placed reliance upon the decision of the apex court in Sanat Kumar Dwivedi versus Dhar Jilla Sahakari Bhoomi Vikas Bank Maryadit and others [ (2001) 9 SCC 402] In para 2 and 3, the apex court has observed as under:

"2. The admitted facts are that the appellant

was reinstated in service by order dated 12.5.1978 with a condition that he will not get any back wages. Obviously, earlier on 8.3.1976 his services were terminated but by the aforesaid order, he was reinstated without back wages. He accepted such reinstatement without back wages by his joining report, Annexure R-4 at p.106 of the paper book that he has joined his duty on 13.5.1978. By his own conduct, the appellant has accepted the correctness of the order of reinstatement without back wages. Under these

circumstances, subsequent dispute raised by him regarding back wages was clearly not maintainable as held by this court in State of Punjab v. Krishna Niwas [1 (1997) 9 SCC 31]. In view of the settled legal position, no interference is called for. The appeal is, therefore, dismissed.

3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even condition Nos. 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given. "

Therefore, considering the facts of the present case in light of the aforesaid decision of the apex court, it is clear that the petitioner was reinstated in by order dated July 14, 1995 on the basis of the award made by the labour court for reinstatement without back wages and the same was accepted by the workman without any objection or protest as regards back wages. Thus, by his own conduct, the petitioner has accepted the correctness of the award of reinstatement made by the labour court without back wages. Under these circumstances, subsequent dispute raised by him regarding back wages is clearly not maintainable as held by the Apex Court in State aforesaid decision following the decision in State of Punjab v. Krishna Niwas [1 (1997) 9 SCC 31]. In view of that, the petition subsequently filed by the workman qua back wages alone is not maintainable and the same is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas