

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 4420 of 2000(O&M)

Date of Decision: 11.02.2015.

Dhiraj Pal Singh

...Appellant.

Versus

Director General Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Hari Om Sharma, Advocate for the appellant.

Mr. Piyush Kant Jain, Addl. Advocate General, Punjab.

B.S. Walia, J. (Oral)

Learned counsel for the appellant contends that after the dismissal of the Special Leave to Appeal by the Hon'ble Supreme Court upholding the order of dismissal of the appellant from service dated 10.03.1989, the appellant who had also filed a memorial, challenged the order dated 22.12.1993 dismissing the memorial by way of civil suit out of which this instant regular second appeal has arisen.

Although a number of questions of law were framed at the time of admission of the regular second appeal, yet learned counsel for the parties are ad idem that the only substantial question of law which needs to be gone into is with regard to the maintainability of the suit. The reframed

substantial question of law arising for consideration in this appeal is as under :-

“Whether on the appellant having remained unsuccessful up to the Hon'ble Supreme Court qua challenge to the orders of the disciplinary authority dismissing him from service, passing of an order subsequently on memorial filed by the appellant could be made subject matter of scrutiny by the Courts.”

I have heard learned counsel for parties and am of the view that once the order of dismissal from service dated 10.03.1989 had been upheld up to the Hon'ble Supreme Court, then the question of taking out proceedings challenging order rejecting the memorial did not arise. The subsequent suit challenging the order dated 22.12.1993 passed on the memorial was not maintainable since the challenge to the legality of order of dismissal from service impugned in the earlier suit had attained finality upto the Hon'ble Supreme Court.

The controversy involved herein is no longer res-integra in view of the law laid down by the Hon'ble Supreme Court in **Jai Singh Vs. Union of India and others**, (1977) 1 SCC 1, wherein it was held that parallel remedies in respect of the same matter cannot be pursued. Relevant extract of the same is reproduced hereunder :-

“ It has also been brought to our notice that after the dismissal of the writ petition by the High Court, the appellant has filed a suit, in which he has agitated the

same question which is the subject matter of the writ petition. In our opinion, the appellant cannot pursue two parallel remedies in respect of the same matter at the same time.”

In the circumstances, I am of the considered opinion that it would not be open to the appellant on having remained unsuccessful in the challenge to the orders of dismissal upto the Hon'ble Supreme Court to agitate the matter afresh in the garb of challenge to order of dismissal of memorial which was also directed against the legality of order of dismissal. Once recourse was taken against the order of dismissal from service to a court of law and the said orders having been upheld upto the Hon'ble Supreme Court, in the absence of liberty having been granted by the Hon'ble Court to pursue remedy of memorial, filing of a suit challenging the validity of order dismissing the memorial is legally unsustainable.

In view of the above, the substantial question of law referred to at the outset stands answered against the appellant and the instant regular second appeal is dismissed as being not maintainable.

No other point has been argued.

Dismissed with no order as to costs.

February 11, 2015.

kanchan

(B.S. WALIA)

JUDGE