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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 21.03.2023

SHAIJPAL KAUR AND ANR.

-Petitioners

Versus

STATE OF PUNJAB AND ORS.

-Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Satvik Bansal, Advocate with
Mr. Abhimanyu Tewari, Advocate and
Mr. Amitabh Tewari, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.(ORAL)

1. One Surinder Singh, and, one Surinder Kaur, instituted Civil Writ Petition No.5876 of 2021, before this Court. In the said petition, one Sehajpal Kaur, and, another were impleaded as respondents.

2. Through a decision, made on the petition (supra), on 27.09.2022, this Court had, in the operative portion of its verdict, made the hereinafter extracted conclusions:-

“In the present case, once, the result has been declared and final sheet, in the form of Form-35, has been issued, the only remedy available with the petitioners is to approach the State Election Commission/Tribunal. It is not the case here that any direction for recounting of the votes has been given by this Court. The recounting has been done by the authorities after following due procedure pursuant to the inquiry report dated 18.02.2021 (Annexure P-5), under Rule 82 of the Punjab Municipal Election Rules, 1994, which they could have done.”

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3. However, the aggrieved therefrom, one Sehajpal Kaur, and, another instituted SLP (C) No.18483 of 2022, before the Hon'ble Apex Court, which became disposed of by the Hon'ble Apex Court, with the hereinafter extracted declaration(s), which are carried in paragraphs 3, 4, and, 5 thereof. The paragraphs (supra) are extracted hereunder:-

“3. The petitioners to these proceedings were not the petitioners before the High Court in proceedings under Article 226 of the Constitution. They were respondents to those proceedings.

4. Hence, we clarify that the impugned order of the High Court dismissing the writ petition filed by the seventh and eight respondents will not come in the way of the petitioners seeking independent recourse to the remedies which are available to them in accordance with law.

5. In the event that the petitioners do so, the observations of the High Court, in the impugned judgment dated 27 September 2022, shall not be regarded as a conclusive finding on issues of fact and law, which may arise in such proceedings which may be instituted by the petitioners.”

4. However, the petitioners have re-accessed this Court, with the instant writ petition. Since this High Court in terms (supra), had decided writ petition (supra), and moreover, when the Hon'ble Apex Court had also, in terms (supra), disposed of the SLP (supra). Thus, apparently, the order of this Court, drawn in the writ petition (supra), has merged into the verdict, as made by the Hon'ble Apex Court, wherein, no specific liberty has been assigned by the Hon'ble Apex Court to the petitioners to, re-access this Court, with a freshly instituted writ petition. Thus, the reservation(s), as made, to the petitioner to recourse the remedies, which are available to them, in accordance with law, hence in verdict (supra), made by the Hon'ble

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Apex Court, has to be construed to be reservation of a liberty to the petitioners, to, in terms of the order made by this Court, rather draw an election petition before the State Election Commission/Tribunal concerned.

5. In consequence, the instant writ petition cannot be permitted to be refiled on the same cause of action, as, was carried in the earlier motion, and, which travelled up to the Hon’ble Apex Court. Therefore, the instant writ petition is dismissed as misconstituted, but, with liberty to the petitioners to cast an election petition before the State Election Commission/Tribunal concerned. However, as declared by the Hon’ble Apex Court in paragraphs (supra), the observations of the High Court, as carried in verdict (supra), shall not be recorded as conclusive finding on issues of fact, and, law, by the Election Tribunal concerned, when it becomes seized with the election petition concerned.

(SURESHWAR THAKUR)
JUDGE

March 21, 2023
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No