



**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Writ Petition No.388 of 2010 (S/S)

Dan Singh Kaniyal
S/o Late Sri Hark Singh Petitioner

Versus

State of Uttarakhand and others Respondents.

Mr. Shobhit Saharai, Advocate for the petitioner.
Mr. Subhash Upadhyaya, Brief Holder for the respondents.

Hon'ble Tarun Agarwala, J.

Heard Shri Shobhit Saharia, the learned counsel for the petitioner and Shri Subhash Upadhyaya, the learned Brief Holder for the State/respondents.

Having heard the learned counsel for the petitioner, this Court is of the opinion that the present writ petition is, in fact, the second writ petition for the same cause of action. The petitioner had earlier filed a writ petition No. **500 (S/S) of 2004, Abhay Sah and others Vs. State of Uttarakhand and others** challenging the advertisement and the consequential selection on the post of Sub Inspector which was dismissed by a judgment dated 23rd July, 2007. Against this judgment, the petitioner preferred a special appeal filing various documents and desiring the Appellate Court to consider the said documents. The Appellate Court was not inclined to consider the additional documents being brought on record since it was of the opinion that the said material was not available before the learned Single Judge. The Appellate Court, however, disposed the appeal by an order dated 14/12/2009, directing the petitioner to make an appropriate representation before the respondents. It is alleged that the representation filed



by the petitioner was rejected, against which, the petitioner has filed the present writ petition.

In my opinion, the second writ petition is not maintainable as held in **Sarguja Transport Service Vs. State of Transport Appellate Tribunal, Gwalior and others, AIR 1987 SC 88** and **Ashok Kumar and other Vs. Delhi Development Authority, (1994) 6 SCC 97**. In **Khacher Singh Vs. State of U.P. and others, AIR 1995 ALL 338**, the Division Bench held that the successive writ petition was not maintainable. In **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and others, (1997) 2 SCC 534**, the Supreme Court held that the second writ petition was not maintainable and the principles of constructive *res judicata* would apply. Similarly, in **State of U.P. and others Vs. State Public Service Tribunal, Lucknow and another, [(2003) 2 UPLBEC 1123]**, the Division Bench held that the second petition for the same relief was not permissible as the petitioner did not seek liberty to agitate the issue afresh and that the principles of Order 23 Rule 1 of the C.P.C. would be applicable.

In the present case, the petitioner is agitating the same issue on fresh grounds. This Court is of the opinion that the petitioner can file a writ petition questioning the selection of any number of grounds but subsequently cannot agitate the issue afresh on new grounds.

In view of the aforesaid, the present petition praying for the same relief on a different ground cannot be allowed to be agitated. The writ petition, consequently, fails and is dismissed summarily.

(Tarun Agarwala, J.)

Dated 21.06.2010
Shiv