

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

**CWP No.2745 of 2017
Date of decision:17.02.2017**

Ramesh Kumar

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amardeep Sheoran, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Arvind Kumar Yadav, Advocate
for respondent No.2.

AMIT RAWAL J. (Oral)

The grievance of the petitioner in the present writ petition is that in pursuance to the occurrence of vacancy on account of death of earlier Lambardar and having been recommended by Assistant Collector, he was appointed as Lambardar on 23.07.2014. Respondent No.2 assailed the aforementioned order before the Commissioner by filing an appeal but the same vide order dated 10.03.2016 was dismissed. Respondent No.2 assailed the aforementioned order by filing a revision petition before the Financial Commissioner. The petitioner, herein, who was arrayed as respondent no.3 was proceeded ex-parte on 14.12.2016, resulting into decision of ROR No.413/15-16 against the him.

Mr. Amardeep Sheoran, learned counsel appearing on behalf of

the petitioner submits that counsel for the respondent was not available as he was pre-occupied in the High Court. He further submits that the party should not suffer on account of lapse of counsel. The order of the Financial Commissioner is an ex parte. The points to be pondered upon could not have been addressed and therefore, setting aside of the appointment as Lambardar has seriously prejudice the right of the petitioner who has been continuing as Lambardar since 2014.

Mr. Arvind Kumar Yadav, Advocate has put in appearance on behalf of respondent No.2 and submits that the absence was intentional, much less willful and therefore, no reasonable cause has been given, thus, writ petition is liable to be dismissed.

Similar is the arguments of Mr. Rajbir Singh, learned Assistant Advocate General, Haryana.

I have heard learned counsel for the parties, appraised the paper book and of the view that once the petitioner has been successful upto the Commissioner regarding his appointment as Lambardar despite having been recommended by the Assistant Collector Grade I, on 09.07.2011, I am of the view that the petitioner should have been given an opportunity to put across the defence before the Financial Commissioner as the party should not suffer for the lapse of the counsel, in view of the law laid down by the Hon'ble Supreme Court in **Rafiz and another vs. Munshi Lal and another** AIR 1980 SC 1400.

The Financial Commissioner ought to have kept the matter

pending or taken the steps to serve respondent No.3 and in case, thereafter, there was no representation, perhaps could have decided the matter.

For the reasons aforementioned, I deem it appropriate to set aside the orders dated 14.12.2016, Annexure P-1 and 18.01.2017, Annexure P-2 by remitting the matter back to the Financial Commissioner for deciding ROR No.413/15-16 afresh in accordance with law after affording effective opportunity to the parties within a period of three months from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the Financial Commissioner on 10.03.2017.

Accordingly, the writ petition stands disposed of, subject to payment of costs of ₹5,000/- to be paid to Mr. Arvind Kumar Yadav, Advocate for respondent No.2 in the High Court.

(AMIT RAWAL)
JUDGE

February 17, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No