

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

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**CWP No.28159 of 2019 (O&M)
Date of decision : 16.08.2021**

SATNAM SINGH

.....Petitioner

Versus

**FINANCIAL COMMISSIONER (APPEALS) PUNJAB AND
OTHERS**

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. O.P. Kamboj, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, D.A.G., Punjab.

Mr. Mandeep K. Sajjan, Advocate
for respondent No. 4.

SUDHIR MITTAL, J. (Oral)

The petitioner was appointed as Lambardar vide order dated 16.03.2017 passed by the Collector, Ferozepur. The said order was challenged by respondent No. 4 and one Harbans Singh before the Commissioner, Ferozepur Division. The appeals were allowed and order dated 16.03.2017 was set aside on the ground that the appellants were not heard by the Collector, although, they were also candidates. They could not appear before the Sub Divisional Magistrate as they were not aware of the date of hearing. This order was challenged by the petitioner by way of two separate appeals before the Financial Commissioner but without success.

Learned counsel for the petitioner has submitted that the choice of the Collector in matters of Lambardari must be respected

unless and until the same is shown to be perverse. No perversity has been pointed out in the findings of the Collector. The learned Commissioner was in error in holding that respondent No.4 and Harbans Singh were not aware of the date of appearance before the Sub Divisional Magistrate. The date of appearance before SDM was fixed by the Naib Tehsildar while passing order dated 28.11.2016 before whom respondent No.4 as well as Harbans Singh were present. The learned Financial Commissioner was only required to go into this aspect of the matter, however, he has gone into the issue of comparative merits which was not permissible in the law. Thus, the impugned order dated 22.04.2019 (Annexure P-5) passed by the Financial Commissioner as well as order dated 21.12.2017 (Annexure P-3) passed by the Commissioner deserve to be set aside.

Learned counsel for respondent No.4 submits that the said respondent as well as Harbans Singh were not aware of date of hearing before the Sub Divisional Magistrate and were unable to appear. They were also applicants for the post of Lambardar and thus were entitled to consideration along with the petitioner. The consideration did not take place and thus, the learned Commissioner was justified in passing order dated 21.12.2017. Since, there is an order of conviction in a criminal case against the petitioner, the learned Financial Commissioner was entitled to take the same into consideration. Thus, impugned orders do not call for any interference.

In Lambardari matters, the law that choice of Collector should not normally be interfered unless the same is shown to be perverse, is very well settled. Thus, the learned Commissioner was in

error in interfering with the order of the Collector without finding any perversity, especially when the order of the Naib Tehsildar records the presence of respondent No.4 and Harbans Singh while passing order dated 28.11.2016, whereby date for appearance before the Sub Divisional Magistrate was given. The learned Financial Commissioner should have confined himself to the issue regarding respondent No.4 and Harbans Singh being unaware of the date of hearing before the Sub Divisional Magistrate. He was not justified in expanding the scope of the enquiry, however, I cannot loose sight of the fact that a conviction has been recorded against the petitioner. Thus, it would be in the fitness of things that the matter is re-examined by the Collector.

For the aforementioned reasons, the impugned orders are upheld and the writ petition is dismissed.

(SUDHIR MITTAL)
JUDGE

16.08.2021

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Whether speaking / reasoned : Yes No

Whether Reportable : Yes No