

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

CWP No. 18557 of 2011

Date of Decision: 17.01.2019

Brah Khurd Primary Agricultural co-operative Society

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and ors

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anurag Jain, Advocate
for the petitioner.

Mr. S.S. Malik, Advocate
for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

1. The order under Section 33 C (2) of the Industrial Disputes Act, 1947 has been passed by the Labour Court without being fully acquainted with the facts, rules, judgments and the decision of the Deputy Registrar, Cooperative Societies rescinding the resolution dated 19.07.2001. There is also an earlier resolution dated 20.12.1991 vide which the pay-scale of Rs. 950-1500/- was granted to Salesman w.e.f. 01.01.1992. The rules of services were framed and came into force for the first time on 06.11.1992 called the Primary Cooperative Credit & Service Societies Staff Service Rules, 1992. Rule 9 deals with scale of pay and emoluments and payment to Salesman a consolidated salary of Rs. 750/- per month with annual increments as fixed in Rule 9.1(a). The Rule does not provide for running pay-scale, and, therefore, a Salesman,

like the 2nd respondent, would only be entitled to consolidated salary w.e.f. 16.11.1992. The decision of the Registrar Cooperative Societies dated 05.03.2003 was to the knowledge of the 2nd respondent in view of his signatures appended found in the document at Annex. P-8 (page 83 of the paper-book), but, this material fact was not brought to the notice of the Labour Court in the proceedings under Section 33 C (2). Further the judgment and order of the learned Division Bench of this Court delivered in CWP No. 14244 of 1999 and 93 other connected writ petitions decided on 24.01.2000 upholding Rule 9 of the Service Rules was also not pointed out to the Labour Court. All this material is required to be considered before reaching any fair and proper conclusion as to the rights of the late respondent for arrears of difference between running pay-scale and fixed salary. There was an abject failure on the part of the petitioning Management who should have brought this material to the notice of the Court, but, since the material which has direct bearing on the case cannot be ignored or glossed over. It would be not be for this Court to examine this material for the first time without a view on it by the Labour Court in the first instance. Therefore, the ends of justice demand that the matter be remitted to the Labour Court for passing a fresh order after the entire material is placed before it. In the remand proceedings, the Labour Court would consider the issue of the LRs of the deceased workman to furnish security to the satisfaction of the labour Court and to await the

ultimate result of the litigation.

2. The Labour Court will return the findings on the sustainability of Annex. P-1 and whether it was legally withdrawn or not and to what effect the rules have a bearing on the rules. Needless to mention, the Labour Court will not be influenced by anything said in the previous order and will do well not to read the impugned order at all and take a fresh look at the entire material before concluding the case. Labour Court would also make an endeavour to dispose of the case expeditiously and preferably within a period of six months. The petitioner and 2nd respondent to place the material on record which they rely on, on the date fixed after the 1st date of appearance.

3. As a result, this petition is partly allowed. The impugned order is set aside.

4. Parties are directed to appear before the Labour Court on 30.01.2019.

(RAJIV NARAIN RAINA)
JUDGE

17.01.2019

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Whether speaking/reasoned : *Yes*
Whether reportable : *No*