opinion, this evidence had no legal sanctity and apart from this, there is no other evidence on record. No material or evidence has been produced during the course of inquiry that the petitioner used to serve meal to the accused persons. Admittedly, petitioner was only a cook. He has specifically denied all allegations of service of meal to the accused persons or even the officials. In absence of their being any evidence that the petitioner had served meal to the accused Rajinder Kumar @ Kala the presumptuous allegation of access to the accused during the course of interrogation cannot be accepted. This is a case where the findings are based upon no evidence and are not sustainable in law. This petition accordingly succeeds. The Inquiry report and consequential order of dismissal dated 3rd January, 2008 (Annexure P-24) are hereby quashed. Resultantly, the petitioner is directed to be reinstated forthwith. He shall be entitled to all consequential benefits.

R.N.R.

Before Ranjit Singh, J

SAVITRI DEVI—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

C.W.P. No. 4919 of 2008

9th October, 2009

Constutition of India, 1950—Art 226—Husband of petitioner on closure of HSMITC absorbed in Revenue Department—Counting of previous service for benefit of additional increment/higher standard scale—Respondents denying counting of previous service towards benefit of higher standard scale—High Court allowing petition and husband of petitioner continue to draw higher standard scale by taking into account previous service—Husband of petitioner also granted second ACP on completion of 20 years of service—Pension of petitioner fixed by taking into consideration last pay drawn—Withdrawal of second ACP scale without serving any notice or without disclosing any reason—Recovery of excess payment of salary already granted to husband of petitioner—No justification either in

law or otherwise to refix pay by withdrawing ACP scale in view of earlier order passed by various courts—Action of respondents is wholly unjustified, unfair, thus, unsustainable—Recoveries made from pensionary benefits ordered to be repaid to petitioner—Petition allowed.

Held, that Sub Divisional Officer (Hisar), an IAS Officer has filed reply to this writ petition. The casual manner in which such senior and responsible officers are filing replies, in fact, can be seen from almost all the cases. Replies are filed generally without application of mind. Perhaps the officers are made to sign on the dotted lines on the replies prepared by the Babus working in the offices. It is high time that the officers should realize this important responsibility on their part and need to file accurate pleadings before the courts of law, including the High Court.

(Para 4)

Further held, that no notice was ever served before effecting the recovery and the justification in this regard is that it was not possible to give notice after the death of an employee. This stand, though unjustified, but would appear cruel as well. Once the employee is no more, the benefit shall be payable to the wife who is legally entitled to receive the same. Thus, the requirement of serving notice could not be dispensed with on this specious plea as raised that employee was no more. In short, the total response to this writ petition would reflect the apathy on the part of the respondents, besides the total careful and casual approach in dealing with the issues which are before the Courts. There is no justification either in law or otherwise to refix the pay of the late husband of the petitioner by withdrawing the ACP scale in view of the earlier order passed in this regard by various courts. This action of the respondents is wholly unjustified, unfair and, thus, unsustainable. The recoveries that have been ordered from the pensionary benefits payable to the petitioner, thus, cannot be sustained.

(Para 10)

Rajbir Sehrawat, Advocate, *for the petitioner.*

Harish Rathee, Sr. DAG Haryana, *for the State.*

RANJIT SINGH, J.

(1) The petitioner is a widow of Raj Kumar, who had served in the Department of Land Records, Haryana. He expired on 2nd February, 2006 while in service. The husband of the petitioner had joined as a Patwari on 22nd June, 1979 on *ad hoc* basis in Haryana State Minor Irrigation and Tubewell Corporation (HSMITC). His services were regularised with effect from 22nd June, 1979,—*vide* order dated 7th July, 1982. In the year 1989, the State of Haryana took a decision to close down HSMITC. Simultaneously, a decision was taken by the Government to absorb the employees of this Corporation in other departments. The husband of the petitioner accordingly was absorbed in the Department of Land Records, Haryana on the condition that after absorption in the revenue department, he shall be paid salary at the same rate as per the LPC received from the HSMITC. The husband of the petitioner accordingly joined the Revenue Department in the year 1990. It is averred that the Government took a decision on 20th March, 1998 to count the service of the erstwhile employees of HSMITC after their absorption for the benefit of additional increment/higher standard scale in the new department. In this background. the husband of the petitioner was granted increment on completion of eight years of service by taking into account the service rendered by him in HSMITC. He was also granted the benefit of higher standard scale on completion of ten years of service.

(2) Subsequently, however, on 20th July, 1999, the respondents took a decision to deny the benefit of counting previous service rendered by the husband of the petitioner in HSMITC towards higher standard scale/ additional increment. The husband of the petitioner accordingly challenged this decision by filing Civil Writ Petition No. 13141 of 1999. This writ petition was allowed on 9th October, 2000 and, thus, he continued to draw the higher standard scale by taking into account his previous service rendered in the HSMITC. Respondents never gave any notice for withdrawing this benefit of higher standard scale. This scale was also not withdrawn during the life time to the husband of the petitioner. On completion of twenty years of service, the husband of the petitioner was granted second ACP on 22nd June, 1999. Husband of the petitioner, thus, continued to draw the second ACP scale granted to him. Upon his death in the year 2006, the family pension payable to the petitioner was accordingly fixed by taking into consideration the last pay drawn by her late husband. Subsequently, however,

the respondents without serving any notice or without disclosing any reason have withdrawn the second ACP scale earlier granted to the husband of the petitioner by an order dated 29th August, 2007. The pay scale of the late husband of the petitioner has accordingly been fixed in the scale of Rs. 4,000—6,000 retrospectively. This has been done after withdrawing the service rendered by him in HSMITC. On this basis, the family pension, gratuity, leave encashment and monthly financial assistance, which are admissible and granted to the petitioner have also been reduced by the respondents. Not only that, an amount of Rs. 2,01,440 has been directed to be recovered from her on account of excess payment of salary to the late husband of the petitioner. In a most unfair manner, the respondents have adjusted a sum of Rs. 1,10,084 against the amount of death-cum-retirement gratuity and the remaining amount has also been ordered to be recovered from the amount of leave encashment and from the monthly financial assistance payable to the petitioner. The orders passed by the respondents in this regard were not supplied to the petitioner. Hapless petitioner, thus, was not left with any option but to approach this court by filing the present writ petition.

(3) Though notice regarding stay was issued in this case while issuing notice of motion, yet there was no order granting stay either of recovery or of any other nature. Entire recoveries have been effected from the petitioner.

(4) Sub-Divisional Officer (Hisar), an IAS Officer, has filed reply to this writ petition. The casual manner in which such senior and responsible officers are filing replies, in fact, can be seen from almost all the cases. Replies are filed generally without application of mind. Perhaps the officers are made to sign on the dotted lines on the replies prepared by the Babus working in the offices. It is high time that the officers should realise this important responsibility on their part and need to file accurate pleadings before the courts of law, including the High Court.

(5) In the reply filed, the officer has made an attempt to justify this action as per some clarification received through memo dated 7th March, 2007. As per the reply the prescribed qualifications for Patwaries/Kanungo of the Revenue Department are different than those working in the Consolidated Department. It is then stated that the Patwaries working in

the Revenue Department are eligible for promotion as Kanungo only after passing the examination, whereas the Patwaries in the Consolidated Department become eligible for promotion after three years experience without there being any condition of passing the test. The eligibility for grant of ACP to the petitioner accordingly is questioned by saying that he was not granted exemption from passing the test and so the ACP has been withdrawn as it was granted by mistake. The excess salary paid was also ordered to be so withdrawn and is directed to be recovered from the retiral benefits of the deceased husband of the petitioner. No justification, however, is given in the reply as to how the recoveries are being made from benefit of family pension or the monthly pay and allowances payable to the petitioner.

(6) This stand taken to justify the recovery obviously is not justified in law. The petitioner has filed replication to point out that as per provisions of Rule 8 ACP Scale Rules, eligibility of a person for grant of ACP Scale is not required to be determined again if he was getting the higher standard scale before coming into force of the ACP Scale Rules. Reference in this regard is made to Rule 8(3) which provides that the Government servants who are drawing their pay in a pay scale other than functional pay scale of the post held by them on or before the date of publication of these Rules (ACP Rules) shall be exempted from the operation of the provision of Sub-rules (1) and (2) of this Rule and with reference to such Government servants, the relevant ACP Scale shall be deemed to have been granted under these rules. Even reference is made to a clarification issued by the Government that the eligibilty of a person for grant of ACP scale is not required to be determined again if he was getting higher standard scale before coming into force the ACP Scale Rules, 1998. Based on this, Collector, Hisar has also issued clarification which is annexed with the replication as Annexure P-6. How could the Sub-Divisional Officer then take this stand in the reply which he filed to justify the recovery or to re-flx the pay of deceased husband of the petitioner ? It is sheer negligence or total non-application of mind. The clarification by the Government is issued in the year 2008, based on which Collector, Hisar has issued memo in March, 2008. Still, this reply has been filed in June, 2008.

(7) Either after realising this mistake or to perpetuate this misconceived stand, another order is made on 25th November, 2008, copy

of which is also placed on record by the petitioner along with the replication. The petitioner would term this order to be a fabricated one and so would rather seek prosecution of those concerned with this fabricaion. The justification to withdraw ACP as given in Annexure P-7 is that petitioner is not entitled to the benefit of past service except for purpose of pay protection and that he is/was to be treated as fresh entrant. It is stated that the past service rendered by the late husband of the petitioner in HSMITC is not to be counted for the purpose of grant of ACP. There is, thus, a clear shift in the stand from the reply as filed earlier as is referred above. The petitioner is justified in making reference to the order passed in CWP No. 4935 of 1998 decided on 3rd December, 2001, where the writ petition filed by the employees of the HSMITC for this very cause was allowed. The Government itself had then taken a decision to count the service rendered by the employees in the HSMITC for the purpose of grant of ACP,—*vide* its order dated 3rd September, 2002. Copy of this order has also been placed on record. Recoveries from the pay and allowances of the late husband of the petitioner and other similarly situated employees were still ordered when a Civil Suit No. 623 of 2002 was filed before Civil Judge (Junior Division) Fatehabad. That civil suit was decreed on 27th July, 2005, against which the State filed an appeal which was also dismissed on 23rd December, 2005. No further appeal was filed against this order on the basis of opinion of L.R., Haryana, who found it not to be a fit case for appeal. The petitioner would, thus, urge that the order dated 25th November, 2008 now passed is nothing but a mischief played by the respondents to mislead the court and is not only contrary to the record but is also against the various judicial pronouncements.

(8) The facts as noted above would clearly show that the respondents had not acquitted themselves with honour. A responsible officer who belongs to Indian Administrative Service has not taken care to go through the record or the legal position before filing reply. Once the issues are settled through more than one judicial precedents, the officers cannot be expected to still make an attempt to stick to a stand which has not found favour with the courts. If this is done, it would appear a deliberate attempt, may be to mislead the court. When an attempt was made to deny this benefit of counting the previous service for the purpose of higher standard pay or additional increment, this action was challenged by the petitioner and that

writ petition was allowed on 9th October, 2000. The husband of the petitioner, thus, continued to draw the higher standard pay etc. by taking into account the service rendered by him in HSMITC.

(9) The reason for which the writ petition filed by the late husband of the petitioner was allowed was that the benefit granted was sought to be withdrawn without issuing any show cause notice. The respondents have not become wiser in any manner ever since that date. Even presently, the benefits granted to the late husband of the petitioner have been withdrawn without affording any opportunity of hearing either to him during his life time or subsequently to the petitioner, who would be entitled to the retiral benefits on behalf of her late husband. Why cannot the respondents learn this basic requirement, which must have been applied and reiterated in numerous cases ? Would not it show a total non-application of mind on the part of person filing reply ? Indeed it would be. This perhaps will continue so long as the officers do not apply their independent mind to the cases filed while filing their respective responses. If the officer filing reply had been a bit careful in just going through the record, it was bound to realise that the recovery, which was due against the late husband of the petitioner, perhaps cannot be effected from the petitioner, who is his wife. He can be attributed with this knowledge that upon death of an employee certain recoveries which otherwise could be effected may not be open to be so effected after the death of an employee. If he had been bit careful, he could have noticed that the issue and the order which he is wanting to support is contrary to the settled position on the basis of law laid down by this court and the Hon'ble Supreme Court. This very stand taken in number of petitions did not find the approval of the court and has been settled even up to the Hon'ble Supreme Court. The person filing the reply can be expected to take this stand before the Court and where it is not done, it can legitimately lead to an inference that attempt is being made to mislead the court. The result of this stand and the reply that has been filed is that the pay which the late husband of the petitioner had drawn has been reduced which will lead to reduced amount of gratuity and family pension payable to the petitioner. The consequence is that sum of Rs. 2,01,440 has, thus, become recoverable. A sum of Rs. 1,10,084 has been deducted from the death-cum-retirement gratuity payable to the petitioner and remaining amount from the leave encashment and from the monthly financial assistance being paid to the petitioner.

(10) In response to an information obtained by the petitioner, it is conceded that the petitioner had rendered service in HSMITC, but still he is being paid the retiral benefits including the family pension only on the basis of service rendered by him in the Revenue Department. Thus, his service from 22nd June, 1979 to the date of his absorption in the Revenue Department in the year 1990 is totally being discounted. It is also conceded that no notice was ever served before effecting this recovery and the justification in this regard is that it was not possible to give notice after the death of an employee. This stand, though unjustified, but would appear cruel as well. Once the employee is no more, the benefit shall be payable to the wife who is legally entitled to receive the same. Thus, the requirement of serving notice could not be dispensed with on this specious plea as raised that employee was no more. In short, the total response to this writ petition would reflect the apathy on the part of the respondents, besides the total careful and casual approach in dealing with the issues which are before the courts. There is no justification either in law or otherwise to re-fix the pay of the late husband of the petitioner by withdrawing the ACP scale in view of the earlier order passed in this regard by various courts and as noticed above. This action of the respondents is wholly unjustified, unfair and, thus, unsustainable The recoveries that have been ordered from the pensionary benefits payable to the petitioner, thus, canot be sustained. Consequently, the recoveries that have been effected from the death-cum-retirement gratuity payable to the petitioner and the leave encashment also must be undone. The family pension payable to the petitioner would also be on the basis of last pay drawn by her late husband which has to be by counting the ACP scale which were granted to him. Since the respondents have made the petitioner to file this petition to agitate the issue which was settled not otherwise but in the case of her husband as well, it can certainly be viewed that the petitioner has unnecessarily been made to file this petition. This would be not only a burden on her but has led to wasting the time of the court. The respondents could be expected to take fair stand once the petitioner had approached this court. She had obtained the information from the present department by filing an application under Right to Information Act, where reference is made to the writ petition filed by her earlier. Still, the respondents did not take care to check the record. They are, thus, found casual and careless in their approach which cannot be allowed to go un-noticed or un-checked.

(11) The writ petition is allowed. The impugned order directing recovery is set-aside. Direction is issued to refund the amount already recovered within a period of two weeks from the date of receipt of copy of this order. The total amount recovered shall be repaid and so also the remaining amount which are due to the petitioner with interest at the rate of 9% per annum from the date it is due to the date of the payment. The respondents shall pay the cost of this petition which is assessed at Rs. 25,000. This amount be recovered from the salary of the officer, who has filed this reply or any other officer or official found responsible in this regard. The respondents would ask the officer filing the reply to explain the circumstances under which he took this stand which led to in situation. Respondents would also be at liberty to take action against the officer if his explanation is not found satisfactory.

R.N.R.

Before Permod Kohli, J.

TEJ KAUR AND ANOTHER—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 17616 of 2008

5th November, 2009

Constitution of India,1950 —Art. 226—Punjab Cooperative Societies Act—Ss. 55 & 65—Embezzlement, misappropriation and fraud found in accounts of a Cooperative Society—Show cause notices to members of Managing Committee & employees—Son of petitioners working as an employee of Society—Assistant Registrar exonerating son of petitioners after considering his reply—Secretary admitting embezzlement and depositing embezzled amount—Attachment of property of petitioners—No dispute u/s 55 raised by Society against petitioners—Attachment u/s 65 permissible where a reference u/s 55 is pending—Petitioners nothing to do with acts of embezzlement in Society—Invoking jurisdiction u/s 65 is totally illegal, unwarranted and without jurisdiction—Merely because son of petitioners was an employee does not make petitioners liable for any action—Petition allowed.