

the respondents are not trespassers and the execution application as also the appeal were maintainable under section 47 of the Code of Civil Procedure.

The appeal is accordingly allowed and while the order of the lower appellate Court is set aside that of the executing Court is restored. There would be no order as to costs of this appeal.

B.R.T.

Daulat Ram  
and others

v.  
Bhagwanti  
and others

Shamsher  
Bahadur, J.

### REVISIONAL CIVIL

*Before D. Falshaw, C.J. and Tek Chand, J.*

KEHAR SINGH,—Petitioner.

*versus*

PURAN SINGH,—Respondents.

Civil Revision No. 416-D of 1958.

*Code of Civil Procedure (Act V of 1908)—S. 60(1)(h)—  
Bonus paid to labourer—Whether exempt from attachment.*

1963  
March, 25th.

*Held, that bonus, which is paid as a result of an agreement between an employer and his employee, becomes part of the wages and is exempt from attachment under section 60(1)(h) of the Code of Civil Procedure, 1908.*

*Petition under section 25 of Act IX of 1887 for the revision of the order of Shri Om Parkash Saini, A.J.S.C.C. Delhi, dated the 5th August, 1958, holding that the bonus payable to the J.D. is a part of his wages and is not attachable in the execution of this decree and accepting the objection petition.*

DEVINDER KAPUR, ADVOCATE, for the Petitioner.

DUNI CHAND KAPUR, ADVOCATE, for the Respondent.

## ORDER

Falshaw, C.J.

FALSHAW, C.J.—Kehar Singh, petitioner had obtained a decree from the Small Cause Court against Puran Singh respondent for Rs. 317 in 1957. In execution of the decree he obtained an order of attachment of bonus payable to Puran Singh by the Delhi Cloth and General Mills, Co., Ltd. by which Puran Singh was employed as a labourer. Puran Singh objected under section 47 Civil Procedure Code that the bonus was not liable to attachment in execution under section 60(1)(h) of the Civil Procedure Code which exempts from attachment the wages of labourers and domestic servants whether payable in money or kind. The executing Court upheld the judgment-debtor's objection and the decree-holder has filed this revision petition.

The learned Single Judge before whom the revision petition came up for hearing about a year ago referred it to a larger Bench because there appeared to be a conflict between the decisions of the Saurashtra High Court in *Harji Malla and others v. Karsanji Vekhatchand and others* (1), and the Madras High Court in *Chhinaswami v. Ponginanna Goundar* (2), on the question whether bonus payable to a labourer is included in the word 'wages' or not.

This supposed conflict seems to be more apparent than real, since in the Madras decision it was found as a matter of fact that the so-called bonus in that case was an *ex gratia* payment by the employer, and even in that case the principle was recognised that whether bonus is paid by

..... for the Respondent.

(1) A.I.R. 1954 Saur. 19.  
(2) A.I.R. 1957 Mad. 40.

statute or by agreement it becomes part of an employee's wages. In the Saurashtra case it was held that the bonus paid to the labourers employed in a mill from time to time is part of their wages within the meaning of section 60(1) (h) and the view expressed in *Jivan Lal v. Ramtuji Bhaiji* (3), was followed.

Kehar Singh

v.

Puran Singh

Falshaw, C.J.

It is hard to understand under the present circumstances how it can seriously be contended that bonus does not form part of a labourer's wages since any employer whose business is making a profit is inevitably faced by a demand for bonus from his workmen, and if the demand is not accepted the dispute will be referred to an Industrial Tribunal which will go into the state of the employer's business and award bonus according to a formula which has now been worked out by the Courts. Such an award is referred to in the case of *P. Nathmal Sanchethi and others v. Dasarath and others* (4), in which it has been held that where it is clear from an award made in an industrial dispute that the bonus paid under the award was not intended as an *ex gratia* payment but was intended to be an addition to the actual wages paid, it becomes a part of the wages and therefore not attachable in execution of a decree. It has even been held in *Tirjugi Sitaram v. Badlu Prasad Bheru Prasad* (5), that a gratuity paid to a workman on the termination of his employment becomes part of his wages.

The definition of 'wages' in the Payment of Wages Act includes bonus paid by agreement and I do not think that the principle has ever been seriously disputed that where bonus is paid as a

(3) A.I.R. 1945 Bom. 119.

(4) A.I.R. 1959 Mysore 96.

(5) A.I.R. 1962 M.P. 361.

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Puran Singh  
                      
Falshaw, C.J.

result of an agreement between an employer and his employees it becomes part of the wages. It has been proved in the present case that such an agreement entered into between the Delhi Cloth and General Mills Co., Ltd. and its workmen in December, 1956 actually exists. I have therefore no hesitation in holding that the bonus in dispute in the present case formed part of the wages of the judgment-debtor labourer and was therefore not liable to attachment in execution of the petitioner's decree. The revision petition must therefore be dismissed, but the parties will bear their own costs.

Tek Chand, J.

TEK CHAND, J.—I agree.

*B.R.T.*