(1963) 02 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: Letters Patent Appeal No. 2 of 1962

Badlu Prasad		APPELLANT
	Vs	
Tirjuji Sitaram		RESPONDENT

Date of Decision: Feb. 7, 1963

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60(1)

Citation: AIR 1965 MP 42 : (1965) ILR (MP) 597 : (1965) 2 LLJ 666 : (1965) 10 MPLJ 276

Hon'ble Judges: P.K. Tare, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: S.R. Joshi, for the Appellant;

Final Decision: Dismissed

Judgement

Krishnan, J.

In this letters patent appeal the only question for decision is whether the Single Bench was right in holding that the gratuity payable to an unskilled labourer by his employer at the time of his retirement is "wages" for the purpose of Section 60(1)(h) CPC and as such not liable to attachment. Simple as this question is, the parties have not been able to place any answer in reported decisions. But in the light of general principles the Single Bench, in second appeal in an execution case, has held that gratuity is really a form of wages for that purpose, thereby reversing the decision of the District Judge in appeal that it is not; which in its turn was in variation of the executing Court''s view that it is, and as such not attachable.

It has been held throughout that the judgment-debtor is an unskilled labourer; so it is unnecessary to say anything more on that point. In all the Courts it was thought helpful to examine the definition of the word "wages" in different enactment; but this is not free from confusion because, in several of them the word has been used in a sense more or less limited, for the purposes of that particular law. In fact, we have no separate Act on wages generally so called; here we are dealing with

"wages" as one of the several incidental topics in the CPC which is of course a general law. Wages of labourers is one of the many not-attachable properties.

"60(1)(h)--The wages of labourers and domestic servants whether payable in money or kind;"

The definition given in the dictionaries is expected to be wide enough; in the Shorter Oxford, there are several definitions, apparently enabling a party to fix its attention on the one that suits its purpose. But the most general one is "reward or recompense or a payment to a person for services rendered." This obviously does not imply any periodicity. The narrower definition is-

"now especially the amount paid periodically for the labour or service of a workman or servant."

The crux of the controversy before us is that on the one hand the judgment-debtor insists upon the general connotation of the word "wages" which only means a return given to a labourer for services rendered without any indication of periodicity; on the other, the decree-holder urges that any payment on account of services generally is not wages, but only that which is given In return for a particular service or kind or service rendered during a particular period. The District Judge tried to equate the connotation of this word in the CPC with that in the Payment of Wages Act as qualified by the express exclusions in Section 2(vi)(e)(6) of that Act. He reads that exclusion into the word used in Section 60(1)(g) of the Civil Procedure Code. On the other hand, it can be argued with equal plausibility that without, such express exclusion the word might have included "gratuity"; and since there is no such qualification In the Civil Procedure Code, gratuity is wages for the purpose of exemption from attachment.

Actually, the inclusion or exclusion of such payments as bonus and gratuity in the definitions in different enactments is not quite uniform, For example, in the Minimum Wages Act the exclusion is of gratuity payable on discharge, the discharge not being quite equivalent to "the termination of employment" in the particular cases covered by the exclusion in the Payment of Wages Act. In the Industrial Disputes Act on the other hand, the exclusion is worded similarly to what is contained in the Payment of Wages Act. In the Employees Provident Fund Act the notion is of basic wages and there is an exclusion of a number of items mentioned in Section 2(b)(ii) which mentions bonus and any other similar allowance payable. But the very notion of a basic wage is clearly narrower than "wages" generally speaking. In the parallel enactments regarding State Insurance, the exclusion is similar to what is contained in the Minimum Wages Act. In the Workmen''s Compensation Act which was enacted as long ago as 1923 there is no special reference to gratuity or as for that matter even bonus the obvious reason is that since that enactment welfare legislation has made very rapid strides.

The real point is that trying to get an answer from the definition of the word in the enactments of a special nature is bound to lead only to confusion. Each of these enactments was made with the special purpose of giving the employee a certain amount of protection in regard to particular periodical payments and welfare contributions. It is not the aim of any one of these nactments to guarantee to the employee everything that would be payable to him under agreement or statute or regular practice in the business, but only to guarantee certain specific payments most often of a, periodic nature. Besides, the very exclusions would indicate, that without them wages might include the categories of payment thus excluded. So we have to approach the question in the light of recent welfare labour legislation. The CPC itself speaks of "wages of labourers" and leaves it to the Courts to understand by "Wages" what in the context of the particular cases before them it would connote.

Generally speaking, a labourer receives in return for his service periodic payments whether daily, weekly or monthly; they never present any difficulty. In addition, nowadays especially, he gets what might also be periodical, but are most often annual or once in two or three years, and varying in accordance with the net profit in the business; that is called "bonus.". The real nature of this payment has been cleared by recent decisions of higher Courts it is undoubtedly of the nature of wages so called. Then there is a payment by way of gratuity in the event of forced discharge which can be called technically "retrenchment compensation," this is not what the employee gets in return for his actual services but what he is to be paid when he is not permitted to rendar it though he is willing and is actually expecting to render it. This too would be "wages" in the general sense though it is not wages in the narrow sense, either of periodicity or of a payment immediately arising out of some service actually rendered by the employee.

There is another gratuity which is a parting payment at the time of retirement. Originally it was a payment made out of his sweet will and pleasure by the employer; but now it is an established practice, as in the instant case, that an employer pays gratuity to the retired employee in accordance with a fixed formula universally applied to that category of an employee. It is not as if the employer can tell one labourer that he could give so much, and another that out of his sweet will and pleasure he will not give anything. Looking backwards, it partakes of the nature of a bonus paid for the last time during the employment. Looking into the future it partakes of the nature of a pension except that instead of being periodical it is a consolidated amount.

Finally, there is pension itself in regard to which sufficient protection has been given by express mention in Section 60(1)(g). In fact, the CPC itself has put the two kinds of payments side by side. In the case of Government servants, it speaks of stipends and gratuities allowed to pensioners and in case of labourers or domestic servants of "wages" in general.

Thus we have what can be called "wages" in general or the genus of wages which includes all payments made to an employee arising out of the relationship, and "wages" in the narrower or special sense, which is a periodical payment. Different enactments deal with wages of the latter kind, that is, wages as species; but the CPC which has no qualification and no explanation in this regard speaks of wages as genus. No doubt the use of the same in these two different senses may at first sight cause some confusion; but if the context and the purport of the enactment is remembered, the confusion will mostly clear by itself.

The single Bench has considered the definitions in the different enactments and after that has taken into account the general definition and also the broad analogy with bonus and concluded that this gratuity payable on retirement to a labourer like the judgment-debtor is "wages" for the purpose of Section 60(1)(h), Civil Procedure Code. The foregoing discussion would show that this is the proper view. Accordingly, this letters patent appeal is dismissed. In the special circumstances of the case parties shall bear their own costs.

P.K. Tare, J.

I agree.