The Issue of Moonlighting

Why in news?

Companies such as Wipro, Infosys, etc. have raised concerns against moonlighting whereas Tech Mahindra, Swiggy, etc. have voiced their support.

What is moonlighting?

- Moonlighting means taking up a second job or multiple other work assignments apart from one's full-time job.
- Moonlighting is not necessarily dual employment, which is a formal employer-employee relationship, complete with legal obligations like minimum wage, provident fund, gratuity etc.
- It could also be side hustles or freelancing which can be with or without the knowledge of the primary employer.
- Moonlighting is not new and tuitions by school teachers are likely as old as the education industry.
- During the pandemic, those with desk jobs had more time on their hands and thus it was easier to take on a few projects outside of work.

How are companies reacting to moonlighting?

- **Supporting moonlighting**- Swiggy announced a moonlighting policy allowing to take up activities outside office hours, without affecting productivity and without having a conflict of interest.
- Tech Mahindra is open to the practice if it helps employees make extra money.
- **Against moonlighting**- Wipro has sacked 300 employees following the discovery that they were working for rival firms on the side.
- Infosys has warned staff against moonlighting, saying it could lead to termination.

Why is moonlighting oppposed?

- **Productivity**- Companies have opposed the practice, saying that employees doing multiple jobs can impact their productivity.
- **Violation of integrity**- The current employees working for rival firms is considered as a complete violation of integrity.
- **Conflict of interest-** Moonlighting also leads to conflict of interest when current employees work for rival firms.
- **Breaches-** The companies also fear of data and confidentiality breaches.
- **Increase in operating expense-** Employees may use company resources for their second job which increases operating expenses.
- **Tax complexities**- If moonlighting income is received as salary, both the employers will consider standard deduction to calculate the tax liability.

- Additionally, both the employers will take into account the basic exemption limit and consider the tax slab as per the respective salaries.
- This could lead to the TDS being deducted by each employer to be lower than the taxpayer's aggregate tax liability.

What does the law say on moonlighting?

- Moonlighting is **not defined** in any of the statutes in India.
- However, there are enactments that deal with double employment.
- **Section 60 of Factories Act**- No adult worker shall be allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.
- This enactment is applicable only to employees working in factories.
- There are State enactments which deal with employment of persons working in offices, banks, shops, etc. but there is no provision dealing with dual employment.
- **SC observation**- In *Glaxo Laboratories (I) Limited vs Labour Court, Meerut & others,* the court held that the power to regulate the behaviour of the workmen outside the duty hours by the employer amounts to the contract of service being reduced to contract of slavery.

What lies ahead?

- Unless an employer is able to prove that an employee acted against the interest of the company, courts may not uphold severe punishment of termination of employment.
- The courts of law in India dealing with employment are writ courts and labour courts which exercise jurisdiction based on equity or fairness.
- Therefore, the courts may lean in favour of the employee unless the contravention of the employee has led to serious prejudice and loss to the employer.

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