

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

**CWP No.10141 of 2017
Date of decision: 5 .07.2017**

M/s Medropolitan

...Petitioner

Versus

Controlling Authority under the Payment of Gratuity Act and another

...Respondents

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

Present:- Mr.Rahul Kirpalani, Advocate with
Ms.Neha Sonwane, Advocate for the petitioner

RAJIV NARAIN RAINA, J

1. This petition has been filed by invoking writ jurisdiction under Articles 226/227 of the Constitution of India against an interlocutory order dated 26th July, 2016 (Annex. P-11) dismissing an application under Order XI Rules 12, 14 and 21 of the Code of Civil Procedure, 1908 filed by the petitioner-Management to compel the claimant-respondent no.2 for discovery of documents from him.

2. The application has been filed in proceedings on an application under the provisions of the Payment of Gratuity Act, 1972 (for short “the Act”) filed by the ex-employee whose services were terminated in March, 2015. Ordinarily, a writ would not lie against an interim or interlocutory order unless it would avoid a miscarriage of

justice. The claimant-respondent claims gratuity whereas the petitioner-Management obstructs grant of gratuity citing reasons contained in Form “M” (Clause (ii) of sub-rule (1) of Rule 8 of the Haryana Payment of Gratuity Rules, 1972) (for short “the Rules”) thereby repudiating the claim for payment of gratuity by notice dated 21st May, 2015 (Annex. P-3).

3. Learned counsel for the petitioner would especially refer to Clauses 5 to 7 of the Rules. Denial of Payment of Gratuity is based on Section 4 (6) (b) of the Act which provides that gratuity payable to the employee may be wholly or partially forfeited notwithstanding anything contained in sub-section (1) of Section 4 if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. The claimant has been imputed withholding of electronic and other evidence on an allegation that he was moonlighting with one Dr.Cynthia Thaik and was soliciting business for himself without the knowledge of his employer and in breach of confidentiality agreement spelled out in the letter of appointment in terms of Clauses 10, 10.1 and 14.3 of the letter of appointment dated 1st April, 2013 (Annex. P-2).

4. Learned counsel cites Clause 10 which deals with Return of Property and Clause 10.1 which prescribes that upon termination of employment, an employee shall, without delay, return to the company all records, documents and copies thereof and any

other material owned by or regarding the Company and its customers or vendors including any equipment issued to him/her during the course of his/her employment with the Company.

5. Whether gratuity is liable to be forfeited is a matter of determination by the controlling authority and no opinion on the merits can be expressed in the present proceeding since the main case is pending adjudication before the authority. This Court is concerned here with the interlocutory order rejecting the application for discovery of documents preferred by the management as against the claimant-respondent. What the controlling authority has held in short is that it is not proper for it to adjudicate upon a matter of misconduct, to which I would add that no such enforceable right exists against intangible or tangible material without specifying details and particulars.

6. I have read the application. It makes an interesting reading. The discovery requested is to compel the claimant to produce the documents which are stated to be in the exclusive possession of the respondent. Compelling discovery of all emails and other electronic correspondence alleged between the applicant and the third party Dr.Cynthia Thaik which correspondence is beyond the realm of his contractual employment with the Company. The extralegal relationship is in order to cause wrongful gain to himself and to cause wrongful loss to the Company. They want discovery of electronic correspondence with Insignia Pvt. Ltd. from 2014 to the present by

accusing the claimant of entering into a private and illegal arrangement outside the contract of employment with the Company thereby causing wrongful gain to himself and wrongful loss to the Company. They also want Income Tax record, Bank Statements etc. Of the claimant respondent in order to prove that they are not liable to pay gratuity because such conduct involves moral turpitude.

7. A large number of judgments have been cited to show that the Labour Court was incorrect in recording that it does not enjoy the powers of the civil court. Learned counsel cites State of Punjab v. Labour Court, Jullunder, (1980) 1 SCC 4 holding that controlling authority is empowered under Section 7 (4) (a) of the Act to enter upon an adjudication of the dispute and after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable. In this regard, the controlling authority has all the powers as are vested in a court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. Section 7 (5) of the Act is pressed into service to show that controlling authority has the same powers as are vested in a civil court while trying a suit in respect of discovery and production of documents. Here discovery and production of documents means the documents during the course of the employment relationship between the parties affecting their rights and liabilities.

8. Exchange of correspondence with third party and even

with the rival may be cause for dismissal, but not for compelling production as those electronic documents as are privileged communication between one person and another, with attendant right to privacy. There can be no doubt that the Payment of Gratuity Act is a complete and self-contained code and has made provision for resolving all disputes and all disputed questions of fact that may arise for consideration under the Act. The question is not the extent of power which the controlling authority possesses to determine issues when enjoys wide powers as a civil court and to this extent, the controlling authority may not have been wholly correct in his statement of law that it does not have the powers of civil court. What the controlling authority actually meant, I think, was that it cannot exercise powers of civil court to go into misconduct which is a disciplinary matter. One observation here or there cannot be torn out of context. It is not the case that criminal proceedings have been launched by the petitioner against the claimant. Even if there exists an issue, the same will be open to be debated before the controlling authority. Such an application appears to be a dilatory tactic even when the impugned order was passed on 26th July, 2016 while this petition has been presented in May, 2017 after inordinate delay. The request for electronic evidence as against third parties may be protected under Article 20 of the Constitution of India as it involves the claimant's life and liberty. The wordings of Section 4 of the Act are that offence is "committed" by him in the course of employment.

The word “committed” invokes “trial” and “proof” either by the criminal court or in a domestic enquiry. It is too early to reach the conclusion with regard to “moral turpitude” and this issue is left open to the controlling authority to consider.

9. There is another reason not to interfere in the impugned order. To embark upon fishing or roving enquiry is not the work of court or a quasi judicial authority looking for evidence which parties have to produce. The end of which is neither known nor predictable and what relevance would the application have to the facts in issue in a demand for payment of gratuity, in case when one party asserts while another denies. The rest is for the pending trial before the Controlling Authority.

10. In view of the above, I find no merit in this petition which is accordingly dismissed *in limine*.

(RAJIV NARAIN RAINA)
JUDGE

5 . 7.2017
MFK

Whether Speaking/reasoned

Yes

Whether Reportable

No