

HR Law Hotline

October 25, 2005

DOES SERVICE CONTINUE IF RESIGNATION IS WITHDRAWN?

Is an employee entitled to the benefits of continuous service if he withdraws his resignation -- which had been accepted by his employer -- during the notice period?

The Supreme Court says "Yes" in a judgment delivered on October 7, 2005 in the matter of *Srikantha S M Vs Bharat Earth Movers Ltd ("BEML")*, which overruled the judgment given in the matter by the Single Judge and the Division Bench of the Karnataka High Court. The judgment raises the question: Does the employer have to ensure that all the dues of the employee are paid on the very date the employer accepts the resignation, to disentitle such employee from claiming continuous service benefits upon withdrawing his resignation?

Brief facts of this case are that one employee of BEML, Srikantha S M, ("the employee") had submitted his resignation on January 4, 1993, which was accepted by BEML on the same date. However, instead of relieving him from his employment on the same day, BEML informed the employee that his casual leave till January 13, 1993 had been sanctioned and that he would be paid all his dues on January 15, 1993. On January 8, 1993, the employee wrote to BEML, raising several grievances and stating that if he did not receive any suitable reply by January 14, 1993, his resignation should be treated as withdrawn. BEML did not pay heed to this letter of January 8, 1993 and paid the employee his dues on January 15, 1993 as it had informed him earlier, treating the employment as terminated on that day.

On the facts of the matter, the Supreme Court held that the employer-employee relationship did not end on January 4, 1993 but continued till January 15, 1993 when the employee was relieved and his dues were paid. The apex court further held that an employee could withdraw his resignation before the end of his notice period as per settled law. The Supreme Court observed that it was "incumbent" on the employer to give effect to the letter withdrawing the resignation. BEML was directed to treat Srikantha S M as an employee till the time of his superannuation in December 1994, and to give him all service benefits, including arrears of salary till that date.

While the judgment is based on the facts, it would have far-reaching implications on the employer-employee relationship. The actual judgment would need to be examined in detail before applying the law laid down by it.

- Vyapak Desai & %20vyapak(at)nishithdesai.com Rina Kamath

Source: Times of India, Mumbai Edition, October 24, 2005

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Little International Guide (India) 2024

November 08, 2024

Unmasking Deepfakes

October 25, 2024

Are we ready for Designer Babies

October 24, 2024

Research Articles

The Bitcoin Effect

November 14, 2024

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Audio

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper on Simplification of registration for FPIs

September 26, 2024

