

## 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### DOES SERVICE CONTINUE IF RESIGNATION IS WITHDRAWN?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and stating that if he did not receive any suitable reply by January 14, 1993, his resignation should be treated as withdrawn.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

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