A SRIKANTHA S.M.

v.

M/S. BHARATH EARTH MOVERS LTD.

OCTOBER 7, 2005

B [B.N. SRIKRISHNA AND C.K. THAKKER, JJ.]

Service Law:

Bharath Earth Movers Limited Service Rules:

C

Rule 16—Resignation—Withdrawal of—Permissibility—Employee submitted a letter of resignation on 4.1.1993 and requested to be relieved from his duties 'as per company rules'—Resignation accepted on the same day—Employee was informed that he would be relieved 'with immediate D *effect'—However, the employee was informed that his casual leave had been sanctioned from 5.1.1993 to 13.1.1993 and, 14.1.1993 being a holiday, the employee would be relieved by the close of working hours on 15.1.1993—During this period the employee changed his mind and withdrew his resignation by letter dated 8.1.1993—The employee stated that if a suitable reply was not given by 14.1.1993, the letter of resignation dated 4.1.1993 should be treated* E *as withdrawn/cancelled—The employee was informed by a letter dated 15.1.1993 that he would be relieved after officer hours on that day—Service certificate in original along with a cheque was given to him—High Court upheld the company's action and held that it was not open to the employee to withdraw the resignation—Correctness of—Held: Rule 16 makes it clear that a permanent employee may resign from service by giving one month's* F *notice in writing or by paying one month's basic pay in lieu of notice to the company—As the employee has not paid one month's basic pay in lieu of notice the resignation became effective after one month from the date of his resignation letter i.e. from 3.2.1993—Hence, the employee is entitled to withdraw his resignation before 3.2.1993—Therefore, by not giving effect to* G *the letter dated 8.1.1993 whereby the employee withdrew his resignation the company acted contrary to law—Hence, action of company quashed and set aside—Employee entitled to all consequential benefits.*

Words and phrases Resignation—meaning.

H

The appellant was employed as a Senior Manager in the respondent company and was transferred to the Corporate Office. The appellant was not assigned any work at the Corporate Office and, therefore, the appellant tendered a letter of resignation on 4.1.1993 and requested the respondent-company to relieve him from his duties 'as per company rules'. The resignation was accepted on the same day. By another letter, the appellant was informed that his casual leave had been sanctioned from 5.1.1993 to 13.1.1993 and, 14.1.1993 being a holiday, the appellant would be relieved by the close of working hours on 15.1.1993. On 15.1.1993, the appellant was informed that he would be relieved after office hours on that day. The service certificate in original along with a cheque was given to him.

The High Court held that since the appellant had submitted his resignation on 4.1.1993 and it was accepted on the same day by the company, by not continuing him in service, no illegality had been committed by the company. Hence, the appeal.

Allowing the appeal, the Court

HELD: 1. Rule 16 of the Bharath Earth Movers Limited Service Rules makes it clear that a permanent employee may resign from service by giving one month's notice in writing or by paying one month's basic pay in lieu of notice to the company. Admittedly, the appellant had not paid one month's basic pay in lieu of notice to the company. It is, therefore, clear that since the letter of resignation was as per company rules, it was to become effective after one month. [161-F, G]

2.1. Though the respondent-company had accepted the resignation of the appellant on 4.1.1993 and the appellant was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 4.1.1993 to 13.1.1993. Moreover, he was informed that he would be relieved after office hours on 15.1.1993. The *vinculum juris*, therefore, continued and the relationship of employer and employee did not come to an end on 4.1.1993. The relieving order and payment of salary also make it abundantly clear that he has continued in service of the company up to 15.1.1993. [166-G, H]

2.2. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that up to 15.1.1993, the appellant remained in service. If it is so, as per settled law,

the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on 8.1.1993. It was, therefore, incumbent on the company to give effect to the said letter. By not doing so, the company has acted contrary to the law and against the decisions of this Court and hence, the action of the company deserves to be quashed and set aside. The High Court was in error in not granting relief to the appellant. Accordingly, the action of the company as upheld by the High Court is hereby set aside. [167-B, C, D]

Union of India v. *Gopal Chandra Misra,* **[1978] 2 SCC 301,** *Balram Gupta* v. *Union of India,* **[1987] Supp. SCC 228,** *Punjab National Bank* v. *P.K. Mittal,* **[1989] Supp. 2 SCC 175,** *Power Finance Corporation Ltd.* v. *Pramod Kumar Bhatia,* **[1997] 4 SCC 280,** *Shambhu Murari Sinha I* v. *Project and Development India,* **[2000] 5 SCC 621 and** *Shambhu Murari Sinha II* v. *Project and Development India,* **[2002] 3 SCC 437, relied on.**

3. As the appellant withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. [167-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1404 of 2003.

From the Judgment and Order dated 28.1.2002 of the Karnataka High Court in W.A. No. 5500 of 1998 S-Res.

S.N. Bhat, N.P. Panwar and D.P. Chaturvedi for the Appellant.

K.K. Mani and K.B. Sandeep for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. This appeal is filed by the appellant against the judgment and order passed by the Division Bench of the High Court of Karnataka on January 28, 2002 in Writ Appeal No. 5500 of 1998 confirming the order passed by learned single Judge on September 07, 1998 in Writ Petition No. 26090 of 1993.

To appreciate the points raised in the appeal, few relevant facts may be stated.

The appellant was selected by the Chairman and Managing Director of Bharath Earth Movers Limited ('Company' for short) respondent herein, and was appointed as Senior Manager in the Department of Security and Vigilance

for KGF by an order dated December 11,1989. He reported for duty on December 29, 1989. By an order dated December 03, 1992, the appellant was transferred to Corporate Office at Bangalore and was relieved on December 04, 1992. The appellant reported at Corporate Office, Bangalore on December 07, 1992. It was his case that he was not assigned any work at Bangalore. The appellant, in the circumstances, got upset and tendered a letter of resignation on January 04, 1993. In the said letter, he stated that he was thankful to the Chief Managing Director for giving him an opportunity to serve the esteemed organization but he wanted to leave the Company. He therefore, requested to treat the letter as his resignation and relieve him from the duties 'as per Company rules'. On the basis of the said letter, the matter was processed and the resignation was accepted by Deputy General Manager (Personnel) on the same day. The appellant was informed that his resignation had been accepted and he would be relieved 'with immediate effect'. It was also stated that the appellant would be entitled for pay towards notice period as per Company rules. By another letter of even date, however, the appellant was informed that his casual leave had been sanctioned from January 05, 1993 to January 13, 1993. January 14, 1993 being a holiday, the appellant would be relieved by the close of working hours on January 15, 1993. It was also stated that the appellant would be entitled for pay towards the balance of notice period as per Company rules.

It is the case of appellant that from the second letter dated January 4, 1993, it was clear that the resignation submitted by him was to be effective from January 15, 1993 after office hours. During that period, the appellant changed his mind and withdrew his resignation by addressing a letter on January 08, 1993. In the said letter, he made several complaints and raised grievances and finally stated that if suitable reply would not be given by January 14, 1993, his letter of resignation dated January 04, 1993 should be treated as withdrawn/cancelled. On January 15, 1993 the appellant was informed that he would be relieved after office hours on that day. The service certificate in original alongwith a cheque of Rs. 13,511 was given to him.

Since the appellant had withdrawn his resignation on January 08, 1993, the Company could not have accepted it and ought to have continued him in service. But the appellant was not allowed to work after January 15, 1993. He, therefore, approached the High Court of Karnataka by filing a writ petition. The learned single Judge observed in the order that since the appellant had submitted his resignation on January 04, 1993 and it was accepted on the same day by the Company, by not continuing him in service, no illegality had

A been committed by the Company. Accordingly, the petition was dismissed. The Division Bench was of the same opinion and dismissed the appeal. Being aggrieved by the orders passed by the High Court, the appellant has approached this Court. Notice was issued on August 16, 2002 and after hearing the parties, leave was granted on February 17, 2003.

B We have heard learned counsel for the parties.

The learned counsel for the appellant vehemently contended that the appellant submitted resignation on January 04, 1993. No doubt, the resignation was accepted by the Company on the same day and he was to be relieved from service. Later on, however, casual leave was granted for the period C from January 04, 1993 to January 13, 1993 and the appellant was informed that he would be relieved after office hours on January 15, 1993. The appellant, in the circumstances, could have withdrawn the resignation before that date. As the appellant withdrew his resignation on January 08, 1993, it was obligatory on the Company to accept the said letter and to treat him in D service. By not doing so, the Company had acted illegally and unlawfully and the said action ought to have been set aside by the High Court. According to the counsel, till office hours of January 15, 1993, the relationship of employer and employee did not come to an end and effect ought to have been given by the Company to the letter dated January 08, 1993. It was also submitted by the counsel that the appellant was to attain age of superannuation E on December 31, 1994. He was, therefore, entitled to all the benefits as if he would have continued in service upto the date of retirement. It was, therefore, prayed that the order passed by the learned single Judge and confirmed by the Division Bench deserve to be set aside by allowing the appeal and by granting consequential benefits.

F The learned counsel for the respondent, on the other hand, supported the order passed by the learned single Judge and confirmed by the Division Bench. It was urged that the appellant resigned from service on January 04, 1993 and on the same day, the resignation was accepted and he was ordered to be relieved. It was because of the prayer made by the appellant that casual G leave was granted from January 04, 1993 to January 13, 1993 and he was informed that he would be relieved after office hours on the next working day i.e. January 15, 1993. From that, however, it cannot be said that resignation of the appellant was not accepted or the appellant continued in service upto January 15, 1993. It was also submitted that on January 15, 1993, the appellant H was given his service certificate in original alongwith all the benefits to

which he was entitled and he accepted them without any protest. It, therefore, did not lie in the mouth of the appellant that the action was illegal. He is estopped from making grievance against the Company. It was, therefore, prayed that the appeal deserves to be dismissed.

Having given anxious consideration to the facts and circumstances of the case and in the light of Service Rules and various decisions of this Court to which our attention has been invited, we are of the view that the High Court was wrong in holding that it was not open to the appellant to withdraw the resignation.

As is clear from the facts stated hereinabove that the appellant in the letter of resignation, had expressly stated; ''This may please be considered as my resignation and relieved from the duties from the date, *as per Company rules*''. (emphasis supplied) It is thus clear that his resignation was to be considered and an appropriate decision was to be taken as per 'Company rules'. Attention of the Court was invited to the rules framed by the Company known as 'Bharath Earth Movers Limited Service Rules'. Rule 16 deals with resignation Clause (1) of the Rule 16 is relevant and may be reproduced:

> "A permanent employee may resign his employment by giving one month's notice in writing or by paying one month's basic pay in lieu of notice to the Company. The resignation will become valid and effective only after the Company communicates in writing to the employee accepting his resignation. If an employee gives notice of his intention to resign, the Management may accept the resignation and release him at once or at any time before the date of expiry of the notice period, in which case he will be paid only for the period he actually works."

Plain reading of the above rule makes it clear that a permanent employee may resign from service by giving one month's notice in writing or by paying one month's basic pay in lieu of notice to the Company. Admittedly, the appellant had not paid one month's basic pay in lieu of notice to the Company. It is, therefore, clear that since the letter of resignation was as per Company rules, it was to become effective after one month. The learned single Judge was also of the same opinion. He observed in the order that the Company rules required an employee to resign by giving one month's notice in writing, or if he wanted to be relieved immediately, be paying one month's pay in lieu of notice period. Since the appellant had not paid one month's pay in lieu of notice alongwith his letter of resignation, it could safely be presumed

A that he had tendered his resignation letter by giving a notice of one month in writing to the employer. The learned single Judge then observed that the 'intention' of the appellant to resign from service was accepted by the employer on the same day, i.e. January 04, 1993 and he was informed that he would be relieved from service at once. According to the learned single Judge, though by another letter of the same date, the appellant was informed that he B had been granted casual leave from January 05, 1993 to January 13, 1993 and January 14, 1993 being holiday, he would be relieved from January 15, 1993, it was within the powers of the Company under the rules and would not change the legal position that once the resignation was accepted, it was effective. Hence, it was not open to the appellant to withdraw the resignation C on January 08, 1993. Referring to several judgments, the learned single Judge held that since the resignation was accepted, the Company was fully justified in ignoring and not accepting the request of the appellant made in his letter dated January 08, 1993. In the opinion of the learned single Judge, the act of relieving the appellant was a subsequent act which had nothing to do with the act of accepting the resignation and the appellant was not entitled to any D benefit.

The Division Bench, by a cryptic order, dismissed the appeal observing the when the resignation was submitted on January 04, 1993 by the appellant and it was accepted on the same day, the fact that he was relieved on January E 15, 1993 did not make any difference. To us, both the courts were wrong in taking the view that the appellant was no more in service after January 04, 1993.

Now, let us consider the controversy on merits. The term 'resignation' has not been defined in the Service Rules. According to dictionary meaning, F however, 'resignation' means spontaneous relinquishment of one's own right. It is conveyed by Latin maxim *Resignatio est juris propii spontanea refutatio.* (Resignation is a spontaneous relinquishment of one's own right). In relation to an office, resignation connotes the act of giving up or relinquishing the office. 'To relinquish an office' means 'to cease to hold the office' or 'to leave the job' or 'to leave the position'. 'To cease to hold office' or 'to loose G hold of the office' implies to 'detach', 'unfasten', 'undo' or 'untie' 'the binding knot or link' which holds one to the office and the obligations and privileges that go with it.

In *Union of India* v. *Gopal Chanrd Misra,* [1978] 2 SCC 301: [1978] H 3 SCR 12, this Court held that a complete and effective act of resigning an

office is one which severs the link of the resignor with his office and terminates its tenure. A

In *Balram Gupta* v. *Union of India,* [1978] Supp SCC 228, this Court reiterated the principled in *Gopal Chandra Misra* and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants. B

The learned counsel for the parties drew our attention to some of the decisions of this Court on the point. In *Punjab National Bank* v. *P.K. Mittal,* [1989] Supp 2 SCC 175, an employee resigned from service of the Bank by a communication dated January 21, 1986. It was to be effective from June 30, 1986. The Deputy General Manager who was the competent authority under the Service Regulations, accepted the resignation as per the letter of resignation i.e. with effect from June 30, 1986. The employee, however, received a letter from the Bank on February 07, 1986 informing him that his resignation letter had been accepted by the competent authority with immediate effect and consequently he was being relieved from the service of the Bank with effect from that day, i.e. from February 07, 1986. The employee, therefore, filed a petition challenging the validity of the purported acceptance of his resignation with effect from February 07, 1986 and for a direction to the Bank to treat him in service upto June 30, 1986 by granting all consequential benefits. The matter, however, did not end there. On April 15, 1986, the employee addressed a letter to the Bank purporting to withdraw his resignation letter dated January 21, 1986. The question which came up for consideration was as to whether the subsequent development could be taken into account and whether the employee continued in service in view of the withdrawal of resignation dated April 15, 1986. Accepting the contention of the employee that he continued in service, the Court held that his resignation could take effect from June 30, 1986 or on expiry of three months period provided in the Service Regulations and before that period he could withdraw the resignation. Since he had withdrawn the resignation before June 30, 1986, he continued to remain in service with the Bank. C D E F

It was urged on behalf of the Bank that Regulation 20(2) provided for notice to protect the interest *only* of the employer (Bank) and to enable it to make other arrangements in the place of the resigning employee. The proviso to clause (2) enabled the Bank to reduce the notice-period to less than three months and as such it was not obligatory for the Bank to wait till the notice period would expire. G H

A This Court, however, did not agree with the interpretation. Dealing with the object underlying such provision as giving opportunity to both, the employer as well as the employee, the Court stated;

> "We are of the opinion that clause (2) of the regulation and its proviso are intended not only for the protection for the bank but also for the
> B benefit of the employee. It is common knowledge that a person proposing to resign often wavers in his decision and even in a case where has taken a firm decision to resign, he may not he ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief form duties for a few
> C months for various personal reasons. Equally an employer may like to have time to make some alternative arrangement before relieving the resigning employee. Clause (2) is carefully worded keeping both these requirements in mind. It gives the employee a period of adjustment and rethinking. It also enables the bank to have some time to arrange its affairs, with the liberty, in an appropriate case, to accept
> D the resignation of an employee even without the requisite notice if he so desires it. *The proviso in our opinion should not be interpreted as enabling a bank to thrust a resignation on an employee with effect from a date different from the one on which he can make his resignation effective under the terms of the regulation.* We, therefore,
> E agree with the High Court that in the present case the resignation of the employee could have become effective only on or about April 21, 1986 or on June 30, 1986 and that the bank could not have "accepted" that resignation on any earlier date. The letter dated February 7, 1986 was, therefore, without jurisdiction."

F (emphasis supplied)

In *Balram Gupta,* referred to above, the employee withdrew his notice of voluntary retirement on account of persistent and personal requests from the staff members. But the prayer for withdrawal was not allowed by the employer on the ground that it had already been accepted by the Government.
G Moreover, Rule 48-A (4) of the Central Civil Service (Pension) Rules, 1972 precluded the Government servant from withdrawing his notice except with specific approval of the appointing authority.

Deprecating the stand taken by the Government, this Court held that it was not proper for the Government not to accede to the request of the
H employee. "In the modern age we should not put embargo upon people's

choice or freedom'', - stated the Court. A

The Court added;

> "In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or B administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways ''to ease out'' uncomfortable C employees. As a model employer the government must conduct itself with high probity and candour with its employees.''

In *Power Finance Corporation Ltd.* v. *Pramod Kumar Bhatia,* [1997] 4 SCC 280, a workman applied for voluntary retirement pursuant to the D scheme framed by the Corporation to relieve surplus staff. The Corporation vide an order dated December 20, 1994 accepted voluntary retirement of the workman with effect from December 31, 1994 subject to certain conditions. Subsequently, however, the Corporation withdrew the scheme. It was held that the order dated December 20, 1994 was conditional and unless the employee was relieved from the duty on the fulfillment of the those conditions, E the order of voluntary retirement did not become effective. The employee, therefore, could not assert that the voluntary retirement was effective and claim benefits on that basis.

The Court said;

F

> "*It is now settled legal position that unless the employee is relieved of the duty after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end.* Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied G with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right his been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme H

A subsequently.'' (emphasis supplied).

In *J.N. Srivastava* v. *Union of India and Anr,* [1998] 9 SCC 559, a notice of voluntary retirement was given by an employee on October 03, 1989 which was to come into effect from January 31,1990. The notice was accepted by the Government on November 02,1989 but the employee withdrew B the notice vide his letter dated December 11, 1989. It was held that withdrawal was permissible though it was accepted by the Government, since it was to be made effective from January 31, 1990 and before that date it was withdrawn.

In *Shambhu Murari Sinha* v. *Project and Development India and Anr. (Shambhu Murari Sinha I),* [2000] 5 SCC 621, an application for voluntary C retirement of an employee dated October 18, 1995 was accepted by the employer vide letter dated July 30, 1997 with further intimation that ''release memo alongwith detailed particulars will follow''. The workman was actually relieved on September 26, 1997. In the meanwhile, however, by a letter, dated august 7, 1997, he withdrew the application dated October 18, 1995, D by which he sought voluntary retirement. It was held that the effective date of voluntary retirement was September 26, 1997 and before that date it was permissible for the workman to withdraw his retirement. The appellant was, therefore, held entitled to remain in service.

In *Shambhu Murari Sinha* v. *Project and Development India Ltd. and* E *Anr. (Shambhu Murari Sinha II*), [2002] 3 SCC 437, the view taken in *Shambhu Murari Sinha* 1 was reiterated. It was held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had *locus penitentiae* to withdraw his proposal for voluntary F retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work.

On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent-Company had accepted the resignation of the appellant on January 04, 1993 and was G ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from January 04, 1993 to January 13, 1993. Moreover, he was informed that he would be relieved after office hours on January 15, 1993. The *vinculum juris*, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on January 04, 1993. The relieving order and payment of salary also make it abundantly H clear that he was continued in service of the Company upto January 15, 1993.

In affidavit in reply filed by the Company, it was stated that resignation of the appellant was accepted immediately and he was to be relieved on January 04, 1993. It was because of the request of the appellant that he was continued upto January 15, 1993. In the affidavit in rejoinder, the appellant had stated that he reported for duty on January 15, 1993 and also worked on that day. At about 12.00 noon, a letter was issued to him stating therein that he would be relieved at the close of the day. A cheque of Rs. 13,511 was paid to him at 17.30 hrs. The appellant had asserted that he had not received terminal benefits such as gratuity, provident fund, etc. It is thus proved that upto January 15, 1993, the appellant remained in service. If it is so, our opinion, as per settled law, the appellant could have withdrawn his resignation before that date. It is an admitted fact that a letter of withdrawal of resignation was submitted by the appellant on January 08, 1993. It was, therefore, incumbent on the Company to give effect to the said letter. By not doing so, the Company has acted contrary to the law and against the decisions of this Court and hence, the action of the Company deserves to be quashed and set aside. The High Court, in our opinion, was in error in not granting relief to the appellant. Accordingly, the action of the Company as upheld by the High Court is hereby set aside.

The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent-Company no doubt contended that after January 15, 1993, the appellant had not *actually* worked and therefore, even if this Court holds that the action of the respondent-Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of "no work, no pay" would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

We must frankly admit that we unable to uphold the contention of the respondent-Company. A similar situation had arisen in *J.N. Srivastava* and a similar argument was advanced by the employer.The Court, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In *Shambhu Murari Sinha II* also, this Court held that since the relationship of employer and employee continued till the employee attained the age of

A superannuation he would be entitled to "full salary and allowances" of the entire period he was kept out of service. In *Balram Gupta*, in spite of specific provision precluding the Government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The appellant is, therefore, entitled to salary and other benefits.

B For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent-Company in accepting the resignation of the appellant from January 04, 1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned single Judge and the Division C Bench upholding the action of the Company are also set aside. The respondent-Company is directed to treat the appellant in continuous service upto the age of superannuation i.e. December 31, 1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on January 15, 1993 or thereafter. The appeal is accordingly allowed with costs.

D

V.S.S. Appeal allowed.