

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>W.P. No.18657 OF 2018</b>
<b>Parties Name</b>	Rajesh Kumar Rathore vs. High Court of M.P. and another
<b>Date of order</b>	<b>23/11/2021</b>
<b>Bench Constituted</b>	<b>Division Bench : Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav</b>
<b>Order passed by</b>	Justice Purushaindra Kumar Kaurav
<b>Whether approved for reporting</b>	Yes
<b>Name of counsel for parties</b>	<b>For Petitioner:</b> Ms. Anjali Shrivastava <b>For Respondents/State :</b> Shri B.N. Mishra, respondent No.1.
<b>Law laid down</b>	<b>Held:</b> <i>when the services of a temporary employee or a probationer or contingency paid employee is brought to an end by passing innocuous order due to unsatisfactory nature of service or on account of an act for which some action is taken, but the termination is made in a simplicitor manner without conducting of inquiry or without casting any stigma on the employee, the provisions of Rule 9 of the Rules 1980 can be taken aid of. However, when the termination is founded on acts of commission or omission, which amounts to misconduct. Such an order casts stigma on the conduct, character and work of the employee and hence, the principle of natural justice, opportunity of hearing and inquiry is requirement of law.</i>
<b>Significant paragraph numbers</b>	<b>7</b>

**ORDER**  
**(23/11/2021)**

1. The petitioner is aggrieved by an order of termination of his services dated 06.06.2017 (Annexure-P-6) passed by the District & Sessions Judge, Betul and the order dated 20.06.2018 (Annexure-P-9) whereby, the Registrar General of the High Court of M.P., has rejected his departmental appeal.

2. The relevant facts briefly are ;

(i) The petitioner was initially appointed vide order dated 29.12.2016 as daily wager on contract basis to discharge the work of Chowkidar/Waterman/Mali by the District & Sessions Judge, Betul for a period of 89 days purely on temporary basis against the Contingency Establishment, however, vide order dated 23.03.2017, the period of his services was extended.

(ii) Vide show cause notice dated 15.05.2017, he was called-upon by the District & Sessions Judge Betul, to show-cause as to why his services should not be terminated on account of his unauthorized absence between the period 25.04.2017 to 12.05.2017, which was stated to have constitute a clear act of misconduct.

(iii) Despite service of the notice and in absence of any reply, looking to his misconduct of unauthorized absence, vide order dated 06.06.2017 (Annexure-P-6), the District & Sessions Judge, Betul terminated the services of the petitioner.

(iv) The petitioner preferred a departmental appeal dated 04.01.2018 but the same has also been dismissed vide order dated 20.06.2018 (Annexure-P-9).

3. Learned counsel appearing for the petitioner has submitted that on account of sudden death of his grand-mother, he had to proceed on leave. During the said period, his father also fell badly ill and he had to escort him to Nagpur for medical treatment. His father had undergone heart surgery and during the said period, petitioner had to remain with him at Hospital at Nagpur. When condition of his father improved, the petitioner went to the Office where he was informed that his services were terminated. He did not receive any show-cause notice and he being poor person was ignorant of the rules and, taking into consideration severe hardship which he had undergone, the punishment of termination of his services is disproportionate. The petitioner has relied upon the judgments in the case of *Rahul Tripathi vs. Rajeev Gandhi Shiksha Mission, Bhopal*<sup>1</sup>, *Krishna Pal v. District & Sessions Judge, Morena*<sup>2</sup>, *Ramcharan vs. State of M.P. and others*<sup>3</sup>, and *Malkhan Singh Malviya vs. State of M.P.*<sup>4</sup> and submits that on the basis of aforesaid legal pronouncement when stigmatic order is passed against an employee, the same requires conducting of a departmental enquiry and without departmental enquiry, such an order casting stigma, is against the principle of natural justice.

4. On the other hand, learned counsel appearing for the respondent No.1 submits that the show-cause notice was duly served upon the petitioner and he chose not to file the reply. Taking into consideration the nature of services of the petitioner which are purely temporary and contractual in nature, no

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1 2001 (3) MPLJ 616.

2 W.P.17745/2016 order dated 21.02.2017.

3 W.P. 16572/2014 order dated 02.08.2017.

4 W.A. 1166/2017 judgment dt. 08.03.2018.

departmental enquiry is necessary to be conducted. The misconduct of absence from duty is undisputed and, under such circumstances, it cannot be said that the impugned order violates the principle of natural justice. In such a case, compliance of the principle of natural justice is “useless formality”. He also submits that the High Court has limited scope of judicial review in the matter of departmental actions and hence, no leniency can be shown to the petitioner and the instant petition deserves to be dismissed. He has relied upon the judgment passed by the Supreme Court in the matter of *S.L. Kapoor vs. Jagmohan*<sup>5</sup>, *Karnataka State SRTC vs. S.G. Kutturappa and another*<sup>6</sup>, *Ashok Kumar Sonkar vs. Union of India*<sup>7</sup>, *Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association and another*<sup>8</sup>, *APSTRC v. S. Jayaram*<sup>9</sup>, *Meghmala and others vs. G. Narasimh Redy and others*<sup>10</sup> and *Union of India and others vs. P. Gunasekran*<sup>11</sup>.

5. We have heard learned counsel appearing for the parties and perused the record.

6. The short question of law involved in the present case is as to whether the services of an employee under the Rules relating to Recruitment and Conditions of Service of Contingency Paid (District and Sessions Judge Establishment) Employees Rules, 1980, can be terminated without conducting a

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5 (1980) 4 SCC 379.

6 (2005) 5 SCC 409.

7 (2007) 4 SCC 54.

8 (2000) 5 SCC 65.

9 (2004) 13 SCC 792.

10 (2010) 8 SCC 384.

11 (2015) 2 SCC 610.

departmental enquiry when an order of termination casts stigma on the employee.

7. We are in full agreement with the legal position expounded in various judgments cited by the learned counsel appearing for the respondent. However, in the instant case, the question that arise for consideration, as stated above, is squarely covered by the decision of co-ordinate bench of this Court in the case of *Krishna Pal Vs. District & Sessions Judge, Morena* (supra). In the present case, it is an admitted fact that neither charge-sheet was issued nor departmental enquiry was conducted and order of termination attributes dereliction of duty amounting to misconduct, and hence, the same is clearly stigmatic order. The petitioner's services are admittedly governed under the Rules of 1980. If the facts and situation of the present case is examined in the context of the facts and situation of the case of *Krishna Pal* (supra), it is found that this Court had taken a view (para-5 of the said judgment) that Normally when the services of a temporary employee or a probationer or contingency paid employee is brought to an end by passing innocuous order due to unsatisfactory nature of service or on account of an act for which some action is taken, but the termination is made in a simplicitor manner without conducting of inquiry or without casting any stigma on the employee, the provisions of Rule 9 of the Rules 1980 can be taken aid of. However, when the termination is founded on acts of commission or omission, which amounts to misconduct. Such an order casts stigma on the conduct, character and work of the employee and hence, the principle of natural justice, opportunity of hearing and inquiry is requirement of law.

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8. In view of the aforesaid pronouncement of law, we are not inclined to take a different view, therefore, in view of the aforesaid, the impugned order dated 06.06.2017 (Annexure-P-6) and order dated 20.06.2018 (Annexure-P-9) are set aside.

9. Accordingly, petition is **allowed**. No order as to the costs.

[SHEEL NAGU]  
Judge

[PURUSHAINDR KUMAR KAURAV]  
Judge

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