

**W.A. No.655/2010**

**30.8.2011**

We have heard the learned counsel for the appellant.

The petitioner-appellant was contractually appointed for a fixed period. Before the expiry of that period, misconduct was alleged against him and he was given a show cause notice. His reply to the notice was considered and his contractual appointment was terminated. The appellant challenged the termination before the learned Single Judge alleging that such termination was not possible without holding a regular full fledged departmental enquiry. The learned Single Judge repelled the contention and dismissed the writ petition *in limine*.

In this appeal the same submission has been raised before us. The appellant-petitioner has relied upon the decision of the Supreme Court rendered in the case of ***State of Haryana and another vs. Satyender Singh Rathore***, (2005) 7 SCC 518 for the proposition that even in contractual appointment, if termination is stigmatic, departmental enquiry must be conducted. We have gone through the said decision of the Supreme Court carefully and we do not find any such law to have been laid down. The Supreme Court was largely concerned with difference between termination *simpliciter* and termination on the ground of misconduct. It was held in that decision by the Supreme Court that where misconduct is a motive but not a foundation for termination, it would be a termination *simpliciter*.

Normally even in case of regular employees, departmental enquiry is conducted only because the service rules provide for such departmental enquiry and that too normally in cases of major punishments. For minor punishment no departmental enquiry is normally provided in service rules, even for regular employees.

In a nutshell the departmental enquiry becomes necessary only if service rules so provide and not otherwise. However, it can not be

disputed that if the termination is stigmatic, even in case of a contractual employment, the rules of natural justice and fair play are not to be observed.

As stated above, a notice to show cause was given to the petitioner-appellant and his reply thereto was considered, and that in our opinion, is a sufficient compliance of the rules of natural justice.

The next argument of the learned counsel for the appellant is that the persons appointed along with the petitioner-appellant are still continuing in service. This argument does not help the appellant because it is not a case of retrenchment but a case of termination on the ground of misconduct.

Accordingly, we do not find any merit in this appeal. It is dismissed.

**(Sushil Harkauli)**  
**Acting Chief Justice**

**(K.K. Trivedi)**  
**Judge**

ac./AK