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**(2000) 02 MP CK 0048**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 291 of 2000**

Tilak Singh Tomar

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 15-02-2000

**Acts Referred:**

Madhya Pradesh Municipal Services (Scale of Pay and Allowances) Rules, 1967 — Rule 8

Madhya Pradesh Municipalities Act, 1961 — Section 325

**Citation :** (2000) 3 LLJ 1344 : (2000) 3 MPHT 256 : (2000) 2 MPLJ 249

**Hon'ble Judges :** S.P. Srivastava, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

S.P. Srivastava, J.

Heard Shri Arun Upadhyaya, learned counsel for the petitioner as well as Shri K. N. Gupta, Government Advocate representing the respondent No. I/State on advance notice.

Perused the record.

The petitioner has approached this Court by means of the present writ petition praying for a direction requiring the respondents to continue in service of the respondents No. 2 and 3 on the post of Time Keeper and prohibiting them not to terminate his services otherwise than in accordance with law. He has further prayed for a direction requiring the respondents to absorb him in a permanent post according to the rules applicable to the Municipalities and for quashing of the order dated December 31, 1999 issued by the State Government. It has also been prayed that the respondents be directed to release his salary for the month of December 1999 and onwards."

The facts in brief, shorn of details and necessary for the disposal of this case lie in a narrow compass. The petitioner claims that he had been engaged by the

Nagar Palika Parishad, Ambah on daily wage basis and has throughout been discharging his duties attached to the post of Time Keeper since April 27, 1995. It is further claimed that the Nagar Palika Parishad ought to have absorbed him in the regular service classifying him as a permanent employee but the representation sent by him in this regard went in vain. It is further asserted that the petitioner is eligible for appointment on the post of Sub-Engineer and the Nagar Palika Parishad had passed a resolution on November 10, 1999 for taking appropriate action in accordance with rules after obtaining approval from the State Government indicating that a post to accommodate him was vacant but nothing has been done. The petitioner claims that even though the rules regulating the service conditions of the Municipal Council have been framed under the Municipalities Act, 1961 but the petitioner being a workman contemplated under the provisions of the Industrial Disputes Act, 1947, his service conditions are governed by the Special Act, namely; Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Rules framed thereunder. It is further stated that in accordance with the provisions contained in the Standard Standing Orders, the petitioner has acquired the status of a permanent employee on the post against which he has been appointed which is a post falling in Class-III category and he is entitled for absorption according to Rules 8 to 11 of the Madhya Pradesh Municipal Service (Scale of Pay and Allowances) Rules, 1967 and the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968. In this connection, it is further asserted that the Nagar Palika Parishad is an "industry" as contemplated under the Industrial Disputes Act, 1947 and is also an undertaking as contemplated under the provisions of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961. It is also claimed that the petitioner entitled to the benefits available u/s 25F of the Industrial Disputes Act, 1947 and the Rule 77 of the Madhya Pradesh Industrial Disputes Rules, 1957 and the action dispensing with his services amounts to an illegal and unauthorised retrenchment.

It may be noticed that the State Government had issued a direction on July 6, 1999 and thereafter on December 31, 1999, requiring all the Nagar Nigam, Nagar Palika and Nagar Panchayat to dispense with the service of all the employees engaged on daily wage basis subsequent to January 1, 1989 excepting those of the specified category (safai karmachari) latest by January 15, 2000. It may further be noticed that previously the State Government had issued an order providing a scheme for regularisation of the employees engaged on daily wage basis and had fixed the cut-off date for the purpose to be December 31, 1988. The procedure was prescribed for obtaining the sanction and creation of the posts to accommodate daily wagers found eligible and suitable for regularisation.

Taking into consideration the ratio of the decision of a Division Bench of this Court in the case of Iftikar Ahmad Gauri v. Municipal Council, Ambah, reported in 1992(1) MPJR 104 as well as the decision of the Apex Court in the case of Samishta Dube Vs. City Board, Etawah and Another, , there can be no manner of

doubt that the Municipal Council, Ambah, falls within the ambit of the expression "industry" as contemplated under the Industrial Disputes Act, 1947. There is no doubt about the respondent-Municipal Council being an instrumentality of the State.

Learned counsel for the petitioner has strenuously urged that the Municipal Council falls within the ambit of "industry" and the petitioner was entitled to the status of a permanent employee as contemplated under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963. The impugned action, according to the learned counsel for the petitioner, amounted to an unfair labour practice as envisaged under the Industrial Disputes Act, 1947 and was against the service conditions as prescribed under the Standard Standing Orders provided under the Rules of 1963. It has also been urged that the petitioner has been retrenched without complying with the mandatory requirements contemplated u/s 25F of the Industrial Disputes Act, 1947.

The learned Government Advocate representing the respondent-State has urged that the State Government was well within its jurisdiction to issue the direction for dispensing with the services of all those employees engaged by the Municipal Council on daily wage basis after the cut-off date. It has further been urged that the petitioner who had been engaged on daily wage basis had no right to hold any post. It has also been urged that the statutory provisions regarding the recruitment and the appointment of the employees of the Municipal Council were not being adhered to and the State Government was not in a position to bear the unnecessary burden and the financial strain caused by the engagement of surplus staff beyond the sanctioned strength of the cadre. This activity also adversely affected the proper utilisation of the funds of the respondent-Authority for the purposes for which the Municipal Council had been created under the Act. In the circumstances, it is urged that no interference while exercising the discretionary jurisdiction of this Court under Article 226 of the Constitution of India is called for.

It has further been urged that even on the own showing of the petitioner, he claimed to be a workman in an industry and the nature of the dispute raised by him clearly fell within the ambit of an industrial dispute. In the circumstances, it is urged that he ought to have raised such a dispute before the forum made available under the provisions of the Industrial Disputes Act, 1947 for the redressal of his grievance.

It has also been urged that the assertion of the petitioner, that he has to be taken to have acquired the status of a permanent employee, on the strength of the provisions contained in the M.P. Industrial Employment (Standing Orders) Act, 1961, is totally misconceived and it will not be appropriate to hold an inquiry into this matter in the present proceedings. In this connection, it is further urged that the Act of 1961 sought to be relied upon does not confer on the petitioner or vests in him any statutory status so as to entitle him to maintain the present writ

petition.

The petitioner has laid much emphasis on the provisions contained in the Madhya Pradesh Municipal Services (Scale of Pay and Allowances) Rules, 1967 and has tried to urge that he was entitled to absorption as envisaged under Rule 8 of the aforesaid Rules.

A perusal of the various provisions contained in the aforesaid Rules indicate that the State Government had classified Municipal Council in three categories. The First category i.e., Class A Municipal Councils having an annual income of Rs. 5 lakhs or more, the second category i.e., Class B consisting of Municipal Councils having an annual income of Rs. 1 lakh or more but less than Rs. 5 lakhs, and the third category i.e. Class C consisting of Municipal Councils having an annual income of less than Rs. 1 lakh and all notified area committees.

In Rule 4 of the said Rules it has been provided that the actual classification of the existing Municipal Councils will be as per Schedule I. The classification will generally stand for a period of 5 years from the date of publication of these Rules in the Gazette, and was liable to be reviewed from time to time and will be based on the average of the gross actual income for the preceding 5 years, providing however that the classification of any Municipal Council in a higher class than its existing one will not confer any right on the employees of such municipal council for an upward revision of pay-scales applicable to them before such review.

Rule 5 of the Rules provided that the State Government will have power not to change the classification of any municipal Council even if the actual annual income for the preceding five years of that Municipal Council may require re-classification as per Rule 4.

The aforesaid Rules were first published in the Extra-ordinary Gazette on September 29, 1967, and were subsequently amended in the year 1970, 1975 and 1980.

Rule 6 of the Rules stipulates that the office of a Municipal Council may consist of the Departments as mentioned in Schedule II, and each such department may consist of the posts as mentioned in Schedule III. The State Government may add to or delete any post in Schedule III, in consultation with the Municipal Council concerned. The set up prescribed in Schedule III shall be deemed to have taken effect from the "appointed date", which was fixed to be of April 1, 1964.

The expression "Existing employee" of the Municipal Council has been defined. This expression referred to an employee of a Municipal Council in its service immediately before the appointed date. The expression "New entrant" is also defined indicating that it referred to the Municipal employee appointed or deemed to have been appointed on or after the appointed date. The existing posts is also defined indicating that it referred to the posts duly sanctioned by the competent authority and in existence immediately before the appointed date.

The post of absorption has also been defined to be the post included in a cadre or otherwise than in a cadre in which a Municipal employee is absorbed or is deemed to have been absorbed, irrespective of whether the post is permanent or temporary.

Rule 7 of the Rules provides that the posts in existence in each Municipal Council will be equated with the posts mentioned in Schedule III as per Schedule IV. The State Government was to have the power to add, delete or make any amendment in the equation of the post made and shown in Schedule IV after consulting the municipal council concerned. Posts other than those of whose equation has been made as per Schedule IV will continue to be designated as at present until their designation is altered by the State Government.

Rule 8 of the aforesaid Rules is to the following effect

"8. Absorption.-Except for posts mentioned in Sub-section (4) of Section 94 of the Madhya Pradesh Municipalities Act, 1961 and such other posts as may be specified under this Section and the posts of Chief Municipal Officer, Health Officer and Engineer mentioned in Sections 87(1) and 88(1) of the said Act, the employees working on any post, of which equation has been made as per Rule 7, will be absorbed against such equated posts as follows:

(i) Those who have put in atleast 5 years service on their present posts on the appointed date will be absorbed against posts with which their present posts are equated as per Rule 7, irrespective of the fact whether or not they possess the minimum qualifications of such posts as prescribed in Schedule III.

(ii) Those who have put in less than 5 years service on their present posts but possess the minimum qualification for the posts as prescribed in Schedule III with which their existing posts are equated under Rule 7 will be absorbed against such posts.

(iii) Employees other than those governed by sub-rules (i) and (ii) above will be screened by the District Selection Committee. If the Committee considers such employees suitable for posts, against which their present posts are equated, they will be absorbed against such posts. If such employees are not considered suitable by the Committee, they will be absorbed against posts in that Municipal Council which is found suitable by the Committee. The present pay and present scale of such employees will however, be protected.

(iv) The order of absorption will be communicated by the Chief Municipal Officer to each employee by his Municipal Council in the form appended to these rules in Schedule V separately in respect of his officiating and substantive posts. The acknowledgment of the employee in the prescribed form with date of receipt of order of absorption by him will be kept in the personal custody of the Chief Municipal Officer."

It may be noticed that Rule 10 of the Rules provides that employees working on posts on which equation has not been made as per Rule 7 will be absorbed

against their present post.

Section 325 of the Madhya Pradesh Municipalities Act, 1961, clearly stipulates that if in the opinion of the State Government the number of persons who are employed by the Council as officers or servants or whom the Council may propose to employ as such or the remuneration assigned by the Council to those persons or to any of them, is excessive, the Council shall, on the requirement of the State Government reduce the number of those persons or remuneration, as the case may be.

Rule 16 of the aforesaid Rules vested the State Government with the ample jurisdiction to lay down the strength of the staff in each category in a Municipal Council and to declare existing staff over and above prescribed strength as excessive in accordance with Section 325 of the Madhya Pradesh Municipalities Act, 1961.

The pleadings set out in the writ petition do not indicate that the petitioner fell in the category of an employee as envisaged under the aforesaid Rules. Further, there is nothing to indicate that the petitioner was entitled to be considered for any absorption as envisaged under the Rules. What is apparent, however, is that the State Government has taken a decision in exercise of its jurisdiction envisaged u/s 325 of the Act read with Rule 16 of the Rules and has issued a direction requiring the Municipal Council to reduce the number of those persons who were above the sanctioned strength of the staff of the Municipal Council. The petitioner, taking into consideration the nature of the appointment offered to him which he had accepted with his eyes wide open, cannot be deemed to have any such legal right which can be enforced by invoking the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

In fact, the learned counsel for the petitioner has stated that the petitioner is not entitled to any protection as envisaged under the Municipal Services (Scale of Pay and Allowances) Rules, 1967 and the Madhya Pradesh Municipal Employees Recruitment and Conditions of Service Rules, 1968 which do not apply to his case. It has further been stated that there is no notification applying those Rules to the workmen as contemplated u/s 2(2) of the Madhya Pradesh Industrial-Employment (Standing Orders) Act, 1961.

It must not be lost sight of that a daily wager has no right to hold the post. The foundation of his engagement as the aforesaid expression "daily wager" itself indicates is subject to the availability of work. He may be given the work the next day of his engagement only if the work is available. He is not obliged to report for duty on the next day of his engagement as the engagement is for a particular day only. The eligibility and continuous work for howsoever a long period should not be permitted to overreach the law. The requirement of the rules relating to selection and direct recruitment cannot be substituted by humane considerations and the law must take its own course.

Further, as pointed out by the Apex Court, backdoor entry and irregular

appointments have to be checked. Moreover, the petitioner had accepted the appointment on daily wage basis offered to him under not a mistake but with his eyes wide open. He cannot have any grievance. In the circumstances, specific terms of the appointment have to be enforced.

In the present case the petitioner seeking a writ in the nature of a mandamus must show that the duty sought to be enforced is a duty of public nature that is a duty created under the Constitution, Statute or some rule of common law and that the duty is mandatory and not discretionary in nature.

It may also be noticed that back door ad hoc or daily wage basis appointment at the behest of the power source or otherwise and the recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is the negation of fair play. The latter are the product of an order and regularity.

The appointments are to be made in accordance with statutory rules, giving equal opportunity to all the aspirants to apply for the posts and following the prevalent policy of reservation in favour of Scheduled Castes/Scheduled Tribes and Other Backward Classes. Whenever the employees are appointed on ad hoc/time bound/daily wage basis to meet an emergent situation, every effort should be made to replace them by the employees appointed on regular basis in accordance with the relevant rules as expeditiously as possible. However, where no rules are operative, it is open to the employees to show that they have been dealt with arbitrarily and their weak position has been exploited by keeping them ad hoc or on daily wage basis for long spell of time. In its decision in the case of Khagesh Kumar and others Vs. Inspector General of Registration and others, , the Hon''ble Apex Court had not issued direction for regularisation of those employees who had been appointed on ad hoc basis or on daily wages after the cut off date taking into account the provisions of U.P. Regularisation of Ad hoc Appointment (on posts out side the purview of the Public Service Commission) Rules, 1979 and such employees who were not eligible under the said rules were not given the benefit of regularisation.

In its decision in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, the Hon''ble Apex Court had observed that as a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the Public authorities are at liberty to follow any other procedure. There may be some exceptions carved out in the interest of justice and to meet certain contingencies. The exceptions however cannot nullify the main provision.

In the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, , the Apex Court had held that the judicial process cannot be utilised to support a mode of recruitment de hors the Rules. Unless a person establishes his right to a post, he cannot claim any legal right. Unless the appointment confers legal right

on the candidate, he cannot enforce the same by invoking writ jurisdiction.

In case the appointments, as in the present case, are allowed to continue in that event it would have the effect of obliterating the principles enunciated in Articles 14 and 16 of the Constitution which requires that there should be an equality and equal treatment in the eye of law as well as equal opportunity of employment. In case individuals are given appointments through back door, all other eligible candidates who had a right to be considered would be excluded in violation of Articles 14 and 16. Therefore, in such circumstances, the High Court cannot come in aid of the petitioner to invoke its extraordinary writ jurisdiction envisaged under Article 226 of the Constitution in absence of any legal right vesting in the petitioner.

In the present case, the petitioner has not been able to show a right to the post. It is not a fit case where this Court should exercise its discretion envisaged under Article 226 of the Constitution simply on the ground that the petitioner has not been able to establish his legal right to hold the post or to continue in the post. Unless a person claims a right to the post he cannot invoke the writ jurisdiction and any appointment *de hors* the rules cannot be taken to confer any right to continue in service. Right to work is right to livelihood but that does not mean that in every case the said principle would apply even when appointment is made orally or on daily wage basis to serve a temporary need. Unless a right to post is established one cannot claim infringement of right to livelihood.

The Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961, which came into force with effect from July 8, 1961, applies to every undertaking wherein the number of employees on any day during the twelve months preceding or on the day the Act came into force or on any day thereafter was or is more than twenty and such other class or classes of undertaking as the State Government may, from time to time, by notification, specify in this behalf. Section 2(2) of the aforesaid Act provides that nothing in the said Act shall apply to the employees in an undertaking to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Services Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official Gazette apply.

Section 4 of the said Act provides that nothing in the Industrial Employment (Standing Orders) Act, 1946 shall apply to any undertaking to which the Act applies.

Section 6 of the said Act prescribes that the State Government may, by notification, apply standard standing orders to such class of undertakings and from such date as may be specified therein. Where immediately before the commencement of the said Act standing orders are in force in respect of any undertaking, such standing orders were to, until standard standing orders are applied to such undertaking under Sub-section (1) continue in force as if they

were made under the said Act. The standard standing orders made or amendments certified under the said Act were to provide for every matter set out in the Schedule.

The Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 provide standard standing orders for all the undertakings in the State. These standing orders regulate the classification of the employees in an undertaking and other service conditions in regard to the workmen.

As has already been indicated hereinabove the Rules of 1967 and 1968 also provide for the service conditions regulating the recruitment, appointment, promotion, probation, confirmation etc., of an employee of the Municipal Council.

The learned counsel for the petitioner has urged that the status of the petitioner being that of a workman as contemplated under the Industrial Disputes Act, he is entitled to all the benefits and the protections as envisaged under the Standard Standing Orders as the Municipal Council though an instrumentality of the State, has been held to be an industry and since the impugned action is violative of the mandatory requirement envisaged under the Standing Orders as well as Section 25 of the Industrial Disputes Act and amounts to illegal and unauthorised retrenchment of a workman, the impugned order dispensing with the services of the petitioner is liable to be quashed in the present proceedings under Article 226 of the Constitution of India.

In its decision in the case of Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, rendered by a three Judges Bench of the Hon"ble Supreme Court it was clarified that while it was true that the Industrial Employment (Standing Orders) Act makes it obligatory upon the employer of an industrial establishment to which the Act applies or is made applicable to submit draft Standing Orders providing for the several matters prescribed in the Schedule to the Act and it also provides the procedure inter alia, the certifying officer for examining their fairness and reasonableness for certification thereof, yet it must be noted that these are conditions of service framed by the employer - the employer may be a private corporation, a firm or an individual and not necessarily a statutory corporation - which are approved/certified by the prescribed statutory authority, after hearing the workmen concerned. It was further indicated that the Act does not say that on such certification, the Standing Orders acquire statutory effect or becomes part of the statute and it can certainly not be suggested that by virtue of certification, they get metamorphosed into delegated/ subordinate legislation. Though these Standing Orders are undoubtedly binding upon both the employer and the employees and constitute the conditions of the service of the employees, it was difficult to say, on principle, that they have statutory force. Considering the earlier decisions of the Apex Court, it was indicated by the larger Bench, as follows in 1995 III LLJ 728 at p. 735:

"17. Indeed, if it is held that certified Standing Orders constitute statutory

provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution..... We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves."

In paragraph 21 of the aforesaid decision in the case of Rajasthan State Road Transport Corporation (*supra*), it was observed that where a right or obligation is created by the Industrial Disputes Act, it is agreed by all sides that disputes relating to such right or obligation can only be adjudicated by the fora created by the Act, adding further, that this is principle No. 3 in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, .

In paragraph 24 of the aforesaid decision while summing up the principles it was indicated as follows:

"(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act."

In paragraph 35 of the aforesaid decision again summarising the principles it was stated as follows:

"(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*, wherein the power conferred is the power to refer and not the power to decide, though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication."

It was further held as follows:

"(6) The Certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions".

It was further indicated that "the policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

In my considered opinion the ratio of the aforesaid decision stands squarely attracted to the facts and circumstances of the present case and the implications arising under the provisions sought to be relied upon by the petitioner as contained in Industrial Disputes Act or the Industrial Employment (Standing Orders) Act, 1961, the Rules of 1963 framed thereunder and the Model Standard Standing Orders contemplated therein and the provisions contained in the Madhya Pradesh Industrial Relations Act, 1961, have to be considered in the light of the ratio of the decision of the Apex Court in the case of Rajasthan State Road Transport Corporation v. Krishna Kant (supra). Further, I am of the considered opinion that taking that into account, the nature of the dispute and the controversy raised by the petitioner can be effectively decided by approaching the appropriate forum raising an industrial dispute indicated hereinabove and taking into consideration the observations of the Apex Court in its decision in the case of Rajasthan State Road Transport Corporation v. Krishna Kant, (supra) it will not be appropriate to hold an enquiry in the present proceedings under Article 226 of the Constitution of India.

I am further of the opinion that considering the totality of the circumstances referred to hereinabove the present one is not at all a fit case for the intervention of equity.

The learned counsel for the petitioner has heavily relied upon in support of his submissions on the decision of the Apex Court in the case of Krishna Kumar Dubey v. U.P. State Food and Essential Commodities Corporation and Anr., , rendered by a Two Judges Bench of the Hon"ble Apex Court. Besides the fact that this Court is bound to follow the later decision of the Hon"ble Supreme Court of a larger Bench it may be noticed that in the aforesaid decision it was not disputed that the provisions of Section 25F of the Act had been violated and further since the juniors were retained the principles of last come first go had not been adhered to rendering the order impugned in that case vitiated on account of arbitrariness. The ratio of the aforesaid decision cannot come to the rescue of the petitioner in the facts and circumstances as noticed hereinabove.

So far as the question of regularisation of service is concerned, it must be emphasised that regularisation cannot be said to be a mode of recruitment. In that event, it would introduce a new head of appointment in defiance of the rules. It is therefore obvious that there can be no regularisation of service dehors the rules. Further the rules are not for validating an illegal appointment. Regularisation of a service or appointment or ratification thereof is possible only when the initial appointment is within the province and powers of the authority.

The Apex Court in its decision in the case of Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., rendered by a Three Judges Bench while noticing that in the absence of sanctioned posts where assignment had been given to several persons who were claiming regularisation of their services had observed that it is difficult to envisage for them the status of workmen on the analogy of the provisions of the Industrial Disputes Act, 1947, importing the

incidents of completion of 240 days work. It was further indicated that the legal consequences that flow from work for that duration under the Industrial Disputes Act 1947 are entirely different from what, by way of implication, was attributed in the situation in that case by way of analogy. It was emphasised that the completion of 240 days work does not, under the Industrial Law import the right to regularisation.

The Apex Court in its aforesaid decision while pointing out that the completion of 240 days work does not under the Industrial Law import the right to regularisation had further indicated that it merely imposed certain obligations on the employer at the time of termination of the service. It was also indicated that it was not appropriate to import and apply that analogy, in an extended or enlarged form.

Taking into account the ratio of the decision in that case, the principle remains that the completion of 240 days work does not under the Industrial Law import the right to regularisation and it merely imposes certain conditions on the employer at the time of termination of the service leaving it open to it to pass an order rectifying its mistake, if there be any.

The learned counsel for the petitioner has heavily relied upon the decision of this Court in Writ Petition No. 1109/1999 Suresh Kumar Kushwah and Ors. v. State of Madhya Pradesh and Ors. decided on December 22, 1999 in support of this writ petition.

I have carefully perused the aforesaid judgment.

In the aforesaid decision while considering the cases of persons engaged on daily wages, muster-rolls or on ad hoc basis in different Municipalities, the learned single Judge had come to the conclusion that no directions for regularisation could be passed as disputed questions of fact pertaining to the nature of employment and period of service were involved. However, a direction was issued requiring each Municipality to consider the case of the petitioners in the light of the M. P. Municipal Services (Scale of Pay and Allowances) Rules, 1967 for absorption and further holding that since the Municipality is an industry, the conditions of service of employees were to be taken to be governed by the Standard Standing Orders, and therefore, each case was to be examined in the light of the Rules of 1967 and the Standard Standing Orders. The blanket order for removal by the State Government dated July 6, 1999 was quashed with a direction to the Municipalities to consider the case of each and every petitioner in the light of the Rules of 1967 and Standard Standing Orders providing further that after screening, if it was found that the petitioner or some of the petitioners could not be absorbed or continued on account of non-availability of posts or funds, appropriate orders shall be passed by the Municipality according to law. It was also provided that if any person was aggrieved by the action, he might avail the remedy available to him according to law. If the Municipalities feel that they require more posts for effective functioning of the Municipality, they shall request

the State Government for sanctioning of the posts, and if such request is made, it is expected that the State Government shall decide the request within a period of two months from the date of request. It was made clear that till request was not decided, persons eligible to continue against relevant posts pending sanction shall be allowed to continue. The Municipalities shall also consider the case of each individual and decide their case within a period of two months where sanction of the Government is not necessary.

A perusal of the aforesaid order indicates that in fact the learned single Judge had left the case of each petitioner to be considered by the Municipality in accordance with law. There is no finding that either the Rules of 1967 regulating the service conditions of the employees or the Standard Standing Orders stood attracted. The decision of the Apex Court to which a reference has been made hereinabove and the implications arising thereunder do not appear to have been brought to the notice of the learned single Judge. The direction of the State Government which had been quashed was dated July 6, 1999 which had fixed the outer limit upto July 31, 1999 for dispensing with the services of the daily wagers engaged after the cut-off date which was December 31, 1988.

It may be noticed that the aforesaid order was superseded by another order dated December 31, 1999 whereunder a direction has been issued requiring all the Nagar Nigam, Nagar Palika and Nagar Panchayat to dispense with the services of all those employees engaged on daily wage basis subsequent to January 1, 1989 excepting those of a particular category specified therein latest by January 15, 2000 extending the outer limit.

A perusal of the aforesaid order dated December 31, 1999 indicates that the State Government had decided that it will not bear the financial burden cast on account of the engagement of the daily wagers.

It must be emphasised that what is binding on the Court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of the decision for it is the ratio which binds as a precedent and not the conclusion. The ratio of a decision is the logic and reasoning thereof and not merely its conclusion. The conclusion not preceded by reasoning or rationale cannot be deemed to be having a binding effect as a precedent. A search for the reasoning and rationale preceding the conclusions indicated in the aforesaid decision in the case of Suresh Kumar Kushwah (supra) has gone in vain.

Taking into consideration the implications arising under the statutory provisions referred to hereinabove and the decision of the Apex Court to which a reference has been made hereinbefore which is binding under Article 41 of the Constitution of India, it will not be appropriate to leave the matter in lurch especially when it will not be appropriate to hold an enquiry into the questions of fact in the present proceedings and further the speedy and effective as well as efficacious alternative remedy is available to the petitioner by approaching the industrial forum for getting his grievances redressed. In this connection, it may further be

noticed that the Apex Court in its decision in the case of Chandigarh Administration and another Vs. Jagjit Singh and another, rendered by a two Judges Bench had observed that the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.

In view of the conclusions indicated hereinbefore this Court declines to exercise its extraordinary jurisdiction envisaged under Article 226 of the Constitution of India leaving it open to the petitioner to avail the statutory alternative remedy for the redressal of his grievances, if any.

The writ petition is accordingly dismissed in limine.