**SUPREME COURT OF INDIA**

Mahendra L. Jain

Vs

Indore Development Authority

Appeal (Civil) 337 of 2002, Civil Appeal Nos. 334 & 335 of 2002

(N. Santosh Hegde and S.B.Sinha)

22/11/2004

**JUDGMENT**

**S. B. SINHA, J.**

These appeals arising out of a judgment and order dated 26.4.2000 passed in Writ Petition No.1188 of 1997 by the High Court of Madhya Pradesh, Indore Bench, involving similar questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

BACKGROUND FACTS:

The Appellant Nos.1 and 2 are Degree holders in Civil Engineering and Appellant Nos. 3 and 4 are Diploma holders in Civil Engineering. They having come to learn that certain vacancies exist in the Respondent- Authority, applied therefor although no advertisement in that behalf was issued.

The Respondent-Authority appointed the Appellants and posted them to an overseas project known as 'Indore Habitat Project' which was implemented through the agency of 'Overseas Development Authority' (hereinafter referred to as 'the ODA'), on daily wages @ Rs. 63/- per day for the Degree holders and Rs. 52.50 per day for the Diploma holders. On or about 17.3.1997, however, they began receiving a salary of Rs.1500/- per month. Allegedly, from their salary, provident fund was being deducted.

They were also being granted the benefit of leave.

A dispute arose as to whether all the Appellants were employed for the purpose of the said project or the Appellants in Civil Appeal No. 337 of 2002 were appointed in the year 1991 by the Authority for its own job. An industrial dispute was raised by the Appellants herein as their services were not being regularized by the Respondent. The said dispute was referred for adjudication of the Labour Court, Indore, by the State of Madhya Pradesh on the following questions:

"(1) whether non-regularisation of the Sub-Engineers (as per the listed enclosed) is valid and proper? If no, then to which relief they are entitled and what directions should be given to the employer?

(2) Whether it is valid and proper for not giving equal salary to these Sub Engineers like other Sub Engineers in accordance with the equal work? If no, then to which relief they are entitled and what directions should be given to the employer?" *

PROCEEDINGS BEFORE THE TRIBUNAL:

The parties filed their respective pleadings before the Labour Court and also adduced their respective evidences. The Labour Court on the basis of the materials produced before it arrived at the following findings:

1. The Appellants were appointed by the Indore Development Authority.

2. All the employees have been working in the establishment of the Respondents for last 5-6 years.

3. Their work was satisfactory.

4. Work has been taken by the Respondent from all the Appellants except four.

5. Respondents had also mentioned in their claim that there was a proposal to hand over the colony of ODA Project to Indore Municipal Corporation.

6. The salary fixed by the Commissioner was earlier given to all Engineers and later on they were given the salary fixed by the Collector.

7. There is no difference in their work and the work of the employees of Indore Development

Authority.

Aggrieved by and dissatisfied with the said Award, the Respondent-Authority herein filed a writ petition before the Madhya Pradesh High Court, Indore Bench, which was marked as Writ Petition No. 1188 of 1997. By reason of the impugned judgment dated 26.4.2000, the said writ petition was allowed.

High Court Judgment:

The High Court accepted the contention of the Respondent-Authority that the Appellants were not appointed against the sanctioned posts and their services were taken on account of the said ODA Project which was implemented through the agency of the Respondent-Authority. The ODA Project is said to have been completed and only the maintenance thereof was to be looked after by the Indore Municipal Corporation.

It was held that the services of the Appellants cannot be directed to be regularized in services. As regard the application of the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 (for short, 'the 1961 Act') and the Rules framed there under known as 'M.P. Industrial Employment (Standing Order) Rules, 1963 (for short, 'the 1963 Rules'), it was observed that although there was no specific pleadings raised in this behalf by the Respondents therein nor any question having been referred to the Labour Court by the State Government touching the said issue, it committed an error in granting relief to them on the basis thereof on its own motion. Despite the same the High Court went into the question of applicability of the said Act and held that the 1961 Act and the 1963 Rules had no application. Before the High Court various documents were produced by the Appellants herein to show the nature of their employment, but the same had not been taken on records by the High Court. As regard application of the doctrine of 'equal pay for equal work', it was held to be not applicable as the Appellants were not entitled to 'absorption' or 'classification' in terms of the 1961 Act and the 1963 Rules.

SUBMISSIONS:

Dr. Rajiv Dhawan, learned Senior Counsel, appearing on behalf of the Appellants in Civil Appeal No.337 of 2002 and Mr. M.N. Rao, learned Senior Counsel, appearing on behalf of the Appellants in Civil Appeal No.335 of 2002, took us through materials on records and contended that the Appellants herein became 'permanent employees' of the Respondents having regard to the provisions contained in Section 2 of the 1961 Act and Order 2(i) and 2(vi) of the Standard Standing Orders as set out in the Annexure appended to the 1963 Rules defining 'permanent employees' and the 'temporary employees'.

Placing reliance on several documents which have come into existence at a subsequent stage, Dr. Dhawan would contend that vacancies in fact had arisen after passing of the judgment of the High Court and, thus the services of the Appellants should be regularized there against. The vacancies, according to the learned counsel, need not be permanent ones.

It was urged that the expression 'clear vacancies' has to be read in the context of period for which the concerned workman was required to work, namely, six months. The learned counsel would argue that the job was required to be performed for six months for which somebody else could have been appointed so as to attract the provisions of the 1961 Act and the 1963 Rules.

Dr. Dhawan would furthermore contend that the findings of fact had been arrived at by the Labour Court that the Appellants of Civil Appeal No. 337 of 2002 were appointed by the Authority and not only their work was being taken in the Project but also in other works, and, thus, mere posting of the Appellants to the said Project would not disentitle them from the benefit of the said Act.

The learned counsel would urge that a seniority list was also drawn up and an employment code was assigned to each one of the Appellants from which fact the nature of their employment should be judged.

The learned counsel would submit that the sufficient materials were brought on records to show that vacancies were available and as the Appellants worked for a period of more than six months, they became permanent employees in terms of the Act. It was further contended that as the Respondents despite direction to produce documents including the offers for appointment did not produce the same, an adverse inference should have been drawn against them by the High Court. As regard the claim of 'equal pay for equal work', the learned counsel would urge that the High Court has failed to consider the same in its true perspective.

Mr. V.R. Reddy, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would contend that indisputably the Appellants were engaged by the Respondent-Authority but such appointments were made for the purpose of the Project financed by ODA.

The learned counsel would submit that in fact no appointment letter was issued to the Appellants. Our attention was also drawn to the application dated 22.10.1991 filed by one O.P. Mandloi before the Chairman of the Indore Development Authority disclosing his educational qualifications and enclosing therewith the mark-sheets and degrees obtained by him in Civil Engineering and also Secondary School Examination Certificate to show his date of birth whereupon the Chief Executive Officer on the body of the said application itself, made the following endorsement:

"He may be tried in daily wages and should be entrusted with the work of progress collection of ODA work put with (Illegible).

Sd/-C.E.O.23.10.91" *

The learned counsel would submit that in the aforementioned premise the question of regularization of the services of the Appellants does not arise. Drawing our attention also to the pleadings as also

the reliefs claimed for by the Appellants before the Labour Court, the learned counsel would contend that no contention was raised therein by the Appellants as regard their entitlement of permanency in terms of the provisions of the 1961 Act and the 1963 Rules. Furthermore, from the reliefs claimed, it would appear that the Appellants had, inter alia, prayed for continuance of their services by the Indore Municipal Corporation which knocks off the very basis of their claim.

It was urged that there does not exist any controversy that ODA was to continue before 30.6.1997 and as such the Appellants could not have been absorbed by the Respondent authority.

STATUTORY PROVISIONS:

Section 2(2) of the 1961 Act reads as follows:

"Nothing in this 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 Service Regulations or any other rules or regulations that may be notified in this behalf by the State Government in the official Gazette apply." *

Clause 2 of the Standard Standing Order reads as under:

"2.Classification of employees. Employees shall be classified as (i) permanent, (ii) permanent seasonal, (iii) Probationers, (iv) Badlies, (v) Apprentices, and (vi) temporary.

(i) A 'permanent' employee is one who has completed six months' satisfactory service in a clear vacancy in one or more posts whether as a probationer or otherwise, or a person whose name has been entered in the muster roll and who is given a ticket of permanent employee;

(vi) 'Temporary employee' means an employee who has been employed for work which is essentially of a temporary character, or who is temporarily employed as an additional employee in connection with the temporary increase in the work of a permanent nature; provided that in case such employee is required to work continuously for more than six months he shall be deemed to be a permanent employee, within the meaning of clause (i) above." *

DETERMINATION:

The Respondent-Authority is a State within the meaning of Article 12 of the Constitution of India. It is, therefore, constitutionally obliged to strictly comply with the requirements of Articles 14 and 16 thereof before making any appointment. It is also not in dispute that the Respondent- Authority has been constituted under Madhya Pradesh Nagar Tatha Gram Nibesh Adhiniyam, 1973 (Adhiniyam); Section 47 whereof mandates that all appointments to the posts of officers and servants included in

the State cadre mentioned in Section 76-B of the Development Authority Services must be made by the State Government and the appointments to the posts of officers and servants included in the local cadre in the said services by the concerned Town and Country Development Authority.

The proviso appended to Section 47 of the Adhiniyam further mandates that no post shall be created in any authority without the prior sanction of the Sate Government. Section 76B provides for constitution of development authorities service.

It is also not in dispute that the State Government in exercise of its rule making power conferred upon it under Section 85 of the Adhiniyam has made rules known as 'M.P. Development Authority Services (Officers and Servants) Recruitment Rules, 1987.

The posts of Sub Engineers in which the Appellants were appointed, it is nobody's case, were sanctioned ones. Concededly, the Respondent Authority before making any appointment neither intimated the Employment Exchange about the existing vacancies, if any, nor issued any advertisement in relation thereto. Indisputably, the conditions precedent for appointment of the officers and servants of the Authority, as contained in the Service Rules had not been complied with.

The appointments of the Appellants were, therefore, void ab initio being opposed to public policy as also violative of Articles 14 and 16 of the Constitution of India.

The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularization of their services.

The answer thereto must be rendered in negative. **Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalized by taking recourse to regularization. What can be regularized is an irregularity and not an illegality. The Constitutional Scheme which the country has adopted does not contemplate any backdoor appointment. #**

A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily wager in absence of a statutory provision in this behalf would not be entitled to regularization. [See State of U.P. & Others Vs. Ajay Kumar, , Jawaharlal Nehru Krishi Viswa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others ]

In Hindustan Shipyard Ltd. and Others vs. Dr. P. Sambasiva Rao and Others [ 1 ], a Division Bench of this Court observed :

"10. The process of regularization involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which have been made by the appellant-Corporation, regular appointment on the post of medical officer can only be made after

the duly constituted Selection Committee has found the person suitable for such appointment." *

In A. Umarani vs. Registrar, Cooperative Societies and Ors. 2004 (6) JT 110], a three-Judge Bench of this Court of which we were members upon taking into consideration a large number of decisions held:

"Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions.

In this case except the Nodal Centre functions and supervision of the cooperative society, the State has no administrative control over its day to day affairs. The State has not created any post nor they could do so on their own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time." *

Yet recently in Pankaj Gupta & Ors., etc. vs. state of Jammu & Kashmir & Ors. 2004 (8) JT 531], a Division Bench of this Court opined:

"No person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right for regularization in the service because of the erroneous procedure adopted by the concerned authority in appointing such persons." *

CASE LAW RELIED UPON BY THE APPELLANT:

In Dr. A.K. Jain and Others etc. vs. Union of India and Others 8], this Court did not lay down any law. It was, in fact, held that as the Petitioners therein were not regularized in accordance with the prescribed rules and regulations for regular appointments, their services had to be terminated and as such there had been neither any arbitrary nor illegal action on the part of the respondents nor any violation of the Fundamental Rights guaranteed under Articles 14 and 16. However, having regard to the facts and circumstances of the said case, some directions were issued presumably in terms of Article 142 of the Constitution.

In Hindustan Shipyard Ltd. (supra) this Court also distinguished the said decision.

In Niadar and Another vs. Delhi Administration and Another [ ], again no law has been laid down. It appears that there existed a scheme for regularization and some directions were issued in terms

thereof.

The said decisions, thus, are of no assistance in this case.

APPLICATION OF THE ACT AND THE RULES :

The 1961 Act was enacted to provide for rules defining with sufficient precision in certain matters the conditions of employment of employees in undertakings in the State of Madhya Pradesh. By reason of the provisions of the said Act, application of Standard Standing Orders to undertakings has been provided in terms whereof the matters to be provided in the Standard Standing Orders have been specified. Under sub-section (1) of Section 6, the State Government may, by notification, apply Standard Standing Orders to such class of undertakings and from such date as may be specified therein Sub-section (2) of Section 6 reads as under:

"Where immediately before the commencement of this Act standing order are in force in respect of any undertaking, such standing orders shall, until standard standing orders are applied to such undertaking under sub-section (1) continue in force as if they were made under this Act." *

No notification has been brought to our notice that the Standard Standing Orders had been made applicable to the Appellants. It is furthermore not in dispute that Adhiniyam came into force in 1973. The statute, rules and regulations formed by the State govern the terms and conditions of service of the employees of the Respondent. The terms of conditions of service contained in the 1973 Act and the 1987 Rules are not in derogation of the provisions contained in schedule appended to the 1961 Act.

The 1961 Act provides for classification of employees in five categories. The 1973 Act, as noticed hereinbefore, clearly mandates that all posts should be sanctioned by the State Government and all appointments to the said cadre must be made by the State Government alone. Even the appointments to the local cadre must be made by the Authority. The said provisions were not complied with.

It is accepted that no appointment letter was issued in favour of the Appellants. Had the appointments of the Appellants been made in terms of the provisions of the Adhiniyam and Rules framed there under, the Respondent-Authority was statutorily enjoined to make an offer of appointment in writing which was to be accepted by the Appellants herein. Who made the appointments of the Appellants to the Project or other works carried on by the Authority is not known.

Whether the person making an appointment had the requisite jurisdiction or not is also not clear. We have noticed hereinbefore that in the case of Om Prakash Mondloi, the CEO made an endorsement to the effect that he may be tried in daily wages and should be entrusted with the work of progress collection of ODA work. The said order is not an 'offer of appointment' by any sense of term.

It may be true that the Appellants had been later on put on a monthly salary but there is nothing on record to show as to how the same was done. They might have been subjected to the provisions of the employees provident fund and might have been granted the benefit of leave or given some employment code and their names might have found place in the seniority list amongst others, but thereby they cannot be said to have been given a permanent ticket. The so-called seniority list which is contained in Annexure P-27, whereupon strong reliance has been placed by Dr. Dhawan merely itself goes to show that it was prepared in respect of office muster employees.

The said seniority list was not prepared in terms of the classification of employees within the meaning of the 1961 Act and the rules framed there under but was based on the date of joining probably for the purpose of maintenance of records. The 1973 Act or the rules framed there under do not provide for appointments on ad hoc basis or on daily wages.

The 1961 Act itself shows that the employees are to be classified in six categories, namely, permanent, permanent seasonal, probationers, badlies, apprentices and temporary. The recruitments of the Appellants do not fall in any of the said categories. With a view to become eligible to be considered as a permanent employee or a temporary employee, one must be appointed in terms thereof. Permanent employee has been divided in two categories (i) who had been appointed against a clear vacancy in one or more posts as probationers and otherwise; and (ii) whose name had been registered at muster roll and who has been given a ticket of permanent employee. A 'ticket of permanent employee' was, thus, required to be issued in terms of Order 3 of the Standard Standing Orders. Grant of such ticket was imperative before permanency could be so claimed. The Appellants have not produced any such ticket.

It is not the case of the Appellants that they had been working as Technical Supervisors and Clerks in respect of which service book may be maintained instead of issuance of a ticket. It is also not the case of the Appellants that their names had appeared in the service book maintained for the said purpose.

The Standing Orders governing the terms and conditions of service must be read subject to the constitutional limitations wherever applicable. Constitution being the suprema lax, shall prevail over all other statutes. The only provision as regard recruitment of the employees is contained in Order 4 which merely provides that the Manager shall within a period of six months, lay down the procedure for recruitment of employees and notify it on the notice board on which Standing Orders are exhibited and shall send copy thereof to the Labour Commissioner.

The matter relating to recruitment is governed by the 1973 Act and the 1987 Rules. In absence of any specific directions contained in the schedule appended to the Standing Orders, the statute and the statutory rules applicable to the employees of the Respondent shall prevail.

In M.P. Vidyut Karamchari Sangh vs. M.P. Electricity Board [ ], a three-Judge Bench of this Court held that a regulation which is not inconsistent with the provisions of the 1961 Act and the Rules,

can be issued by a statutory authority.

For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute. vis-a-vis the 1973 Act and the rules framed there under. But in absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularization. For the purpose of regularization which would confer on the concerned employee a permanent status, there must exist a post. However, we may hasten to add that regularization itself does not imply permanency. We have used the term keeping in view the provisions of 1963 Rules.

We have noticed the provisions of the Act and the Rules. No case was made out by the Appellants herein in their statements of claim that they became permanent employees in terms thereof. There is also nothing on records to show that such a claim was put forward even in the demand raising the industrial dispute. Presumably, the Appellants were aware of the statutory limitations in this behalf. Furthermore, the Labour Court having derived its jurisdiction from the reference made by the State Government, it was bound to act within the four-corners thereof. It could not enlarge the scope of the reference nor could deviate therefrom.

A demand which was not raised at the time of raising the dispute could not have been gone into by the Labour Court being not the subject-matter thereof.

The questions which have been raised before us by Dr. Dhawan had not been raised before the Labour Court. The Labour Court in absence of any pleadings or any proof as regard application of the 1961 Act and the 1963 Rules had proceeded on the basis that they would become permanent employees in terms of Order 2(ii) and 2(vi) of the Annexure appended thereto.

The Appellants did not adduce any evidence as regard nature of their employment or the classification under which they were appointed. They have also not been able to show that they had been issued any permanent ticket. Dr. Dhawan is not correct in his submission that a separate ticket need not be issued and what was necessary was merely to show that the Appellants had been recognized by the State as its employees having been provided with employment code.

We have seen that their names had been appearing in the muster rolls maintained by the Respondent. The Scheme of the employees provident fund or the leave rules would not alter the nature and character of their appointments. The nature of their employment continues save and except a case where a statute interdicts which in turn would be subject to the constitutional limitations. For the purpose of obtaining a permanent status, constitutional and statutory conditions precedent therefor must be fulfilled.

The submission of Mr. M.N. Rao to the effect that the principle of equity should be invoked in their case is stated to be rejected. Such a plea had expressly been rejected by this Court in A. Umarani

(supra).

PROJECT WORK:

This case involves 31 employees. A distinction is sought to be made by Dr. Dhawan that out of them 27 had been appointed to a project and not in a project. The distinction although appears to be attractive at the first blush but does not stand a moment's scrutiny. As noticed hereinbefore, the High Court's observation remained unchallenged, that the project was to be financed by ODA.

The project was indisputably to be executed by the Indore Development Authority; and for the implementation thereof, the appointments had to be made by it. If the Appellants were appointed for the purpose of the project, they would be deemed to have been appointed therefor and only because such appointments had been made by the Respondent would by itself not entitle them to claim permanency. The life of the project came to an end on 30.6.1997. The maintenance job upon completion thereof had been taken over by Indore Municipal Corporation.

The Appellants were aware of the said fact and, thus, raised an alternative plea in their statements of claims. The Labour Court could not have granted any relief to them as prayed for, as Indore Municipal Corporation is a separate juristic person having been created under a statute. Such a relief would have been beyond the scope and purport of the reference made to the Labour Court by the State Government. Furthermore, the Indore Municipal Corporation was not a party and, thus, no employee could be thrust upon it without its consent.

In A Umarani (supra), this Court held that once the employees are employed for the purpose of the scheme, they do not acquire any vested right to continue after the project is over [See paras 41 and 43]. [See also Karnataka State Coop. Apex Bank Ltd. Vs. Y.S. Shetty and Others, 2000 (10) SCC 179 and M.D. U.P. Land Development Corporation and Another Vs. Amar Singh and Others, ]

It is furthermore evident that the persons appointed as daily wagers held no posts. The appointments, thus, had been made for the purpose of the project which, as indicated hereinbefore, came to an end. The plea of Dr. Dhawan to the effect that the Appellants in Civil Appeal No. 337 of 2002 were asked to perform other duties also may not be of much significance having regard to our foregoing findings. However, **it has been seen that even services of one of them had been requisitioned only for the project work. The High Court, in our opinion, was right in arriving at the conclusion that the Appellants were not entitled to be regularized in service. #**

ADVERSE INFERENCE :

Some documents were said to have been called for from the Respondents which are said to have been not produced. One of such documents was offers of appointment. The witness examined on behalf of the Respondents, although at one stage stated that the appointment letters had been issued

to them, upon going through the records brought with him, however, asserted that no such appointment letter was issued. Had the letters of appointment been issued, the Appellants themselves could have produced the same.

They did not do so. It is accepted at the Bar, when the endorsement on the application filed by Om Prakash Mondloi was shown that the appointment letters were not issued. We do not know the relevance of other documents called for determining the issue. If a document was called for in absence of any pleadings, the same was not relevant. In absence of any pleadings, the Appellants could not have called for any document to show that the provisions of the 1961 Act and 1963 Rules would apply. Before the High Court as also before us, the Appellants have produced a large number of documents which were not filed before the Labour Court. Such additional documents had been kept out of consideration by the High Court as also by us. We have referred to the said fact only for the purpose of showing that it would not be correct to contend that the Appellants had no access to the said documents. An adverse inference need not necessarily be drawn only because it would be lawful to do so. The Labour Court did not draw any adverse inference. Such a plea was not even raised before the High Court.

Recently in M.P. Electricity Board vs. Hariram etc. 2004 AIR(SCW) 5476 ], this Court observed :

"In such a factual background, in our opinion, the Industrial Court or the High Court could not have drawn an adverse inference for the non-production of the Muster Rolls for the year 1990 to 1992 in the absence of specific pleading by the respondents-applicants that at least during that period they had worked for 240 days continuously in a given year.

The application calling for the production of the documents was for the years 1987 to 1992. As stated above, between the period 1987 to 1990, as a matter of fact, till end of the year 1990 the respondents have not been able to establish the case of continuous work for 240 days. Considering these facts in our view drawing of an adverse inference for the non- production of the Muster Rolls for the years 1991-92, is wholly erroneous on the part of the Industrial Court and the High Court. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the applicants-respondents.

The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of re-instatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation, Faridabad vs. Siri Niwas 2004 (7) JT 248 ) wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents.

This is what this Court had to say in that regard.. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non- production of evidence is always optional and one of

the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent." *

In any event, in this case, we have proceeded on the basis that the assertions of the Appellants as regard nature of their employment, their continuance in the job for a long time are correct and as such the question as to whether any adverse inference should be drawn for alleged production of documents called for would take a back seat.

EQUAL PAY FOR EQUAL WORK :

The Appellants having been employed on daily wages did not hold any post. No post was sanctioned by the State Government. They were not appointed in terms of the provisions of the statute. They were not, therefore, entitled to take the recourse of the doctrine of 'equal pay for equal work' as adumbrated in Articles 14 and 39(d) of the Constitution of India. The burden was on the Appellants to establish that they had a right to invoke the said doctrine in terms of Article 14 of the Constitution of India.

For the purpose of invoking the said doctrine, the nature of the work and responsibility attached to the post are some of the factors which were bound to be taken into consideration. Furthermore, when their services had not been regularized and they had continued on a consolidated pay on ad hoc basis having not undergone the process of regular appointments, no direction to give regular pay scale could have been issued by the Labour Court. [See Orissa University of Agriculture & Technology and Another vs. Manoj K. Mohanty ].,

In State of Haryana and Another vs. Tilak Raj and Others [ ], it was held :

"A scale of pay is attached to a definite post and in case of a daily-wager, he hold no posts. The respondent workers cannot be held to hold any posts to claim even comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with the other group vis-a-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold that the principle of "equal pay for equal work" is an abstract one." *

The said decision has been noticed in A. Umarani (supfa) CONCLUSION

For the reasons aforementioned, we do not find any merit in these appeals, which are dismissed accordingly. There shall, however, be no order as to costs.