Maharashtra Shramik Sena, Bombay and Others Vs Municipal Corporation of Greater Bombay and Others

Court: Bombay High Court

Date of Decision: Feb. 5, 2002

Acts Referred: Bombay Municipal Corporation Act, 1888 â€" Section 61
Constitution of India, 1950 â€" Article 14, 39

Citation: (2002) 4 ALLMR 38 : (2002) 3 BomCR 519 : (2002) 3 BOMLR 696 : (2002) 3 MhLj 45

Hon'ble Judges: P.S. Patankar, J; D.B. Bhosale, J

Bench: Division Bench

Advocate: A.V. Bukhari, for the Appellant; C.U. Singh and Aruna Savala for respondent Nos. 1 and 2 and Milind More, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Patankar, J.
By this Petition under Article 226 of the Constitution of India, the petitioner"s pray that the Municipal Corporation be

directed to treat the non-teaching staff of the secondary schools run by the Municipal Corporation as municipal servants and to give them service

conditions, benefits and privileges applicable to the other municipal employees.

2. The first petitioner is a Trade Union incorporated under the provisions of the Trade Unions Act, 1926. It represents non-teaching staff viz.

Junior Clerks, Senior Clerks and Full-Time Librarians working in the municipal secondary schools of the Municipal Corporation of Bombay.

Petitioners No. 2 to 4 are its office-bearers. The petitioners have averred that there are 87 Junior Clerks. 74 Senior Clerks and 72 Full-Time

Librarians working in the secondary schools run by the Municipal Corporation. The candidates came to be selected by the Municipal Corporation

for the post of Clerk. They were appointed in the Secondary School. There was no choice in that respect. The clerks working in the Bombay

Municipal Secondary School and the Primary Municipal School and working in other departments were identically placed in respect of their

responsibilities. In the matter of disciplinary action, the clerks working in the Municipal Secondary Schools and the other municipal clerks are

governed by the Municipal Servants Conduct and Discipline Rules. Both the categories of Clerks are granted certain common benefits such as

municipal quarters, housing loan, non-contributory provident fund, but the pay-scales granted to them are different. The pay-scales given to the

non-teaching staff in the municipal secondary school are as per the orders of the Government of Maharashtra (Presently, as per the 5th Pay

Commission). The clerks working in the municipal primary schools and the clerks working in the other Departments are paid salaries fixed by the

Bombay Municipal Corporation. Similarly, there is difference in the case of pension, casual and earned leave and the retirement benefits. The

clerks working in the municipal primary schools and the other departments are paid leave travel allowance, higher bonus, medical allowance, but

no such leave travel, medical allowance are paid to the non-teaching staff working in the municipal secondary schools. Bonus is also paid at the

lower scale. It is submitted that when the work carried out by these Clerks is the same as in the case of clerks employed in the primary schools

and other departments and also their qualifications are same, there is no reason to differentiate between them in respect of the pay-scales etc.

3. It is submitted that the work done by a Librarian in a municipal primary school is the same as the work done by a Librarian in a secondary

school. It is submitted that it is clear from the provisions of the Maharashtra Employees and Private Schools (Conditions of Service) Regulations

Act, 1978 and the Rules framed thereunder that they are not applicable to the municipal schools. Therefore, the non-teaching staff in the municipal

secondary schools cannot be given discriminatory treatment. It is submitted that they should be treated as government servants for all purposes,

including the disciplinary action, or they should be treated as municipal servants and given all benefits accordingly. It is also submitted that the

clerks working in the primary schools of the Corporation are having promotional channel available and they can reach the stage of Deputy

Municipal Commissioner, but there is no channel of promotion available for the clerks in the Municipal Secondary Schools.

4. By filing Affidavit-in-Reply dated 17th December 1992 it has been pointed out that u/s 61(q) of the Bombay Municipal Corporation Act, 1888,

it is the mandatory duty of the Corporation to provide for primary education. u/s 63(b) of the B.M.C. Act to provide for secondary education is a

discretionary one. Therefore, the primary schools are directly maintained by the Municipal Corporation and it also gives Grant-in-aid to other

private primary schools, but the municipal secondary schools of the Corporation receive Grant-in-aid from the State Government. 100% grant on

admissible expenditure is paid by the State Government. Thus, all the expenses for running the municipal secondary schools, including the salaries

to teaching and non-teaching staff, maintenance of the premises, etc. are met by the Municipal Corporation from the 100% Grant received from

the State Government.

5. The Municipal Secondary Schools are governed by the Secondary School Code issued by the Government of Maharashtra. Therefore, the

Municipal Secondary Schools formed are separate and so also the employees of those schools are governed by the Secondary School Code. The

service conditions of the Municipal Corporation would apply only to the extent set out in the Code, It has been pointed out that the Municipal

Corporation started to run the secondary schools in 1965. Initially, the non-teaching staff in the said schools was drawn from the other

Departments. In 1972 the State Government commenced giving grant to those secondary schools. So with effect from 1972 all the new

recruitments of non-teaching staff of secondary schools was made in accordance with the Secondary School Code. The members of the petitioner

No. 1 are all employed after 1972 and they have accepted the appointments. The appointment order itself mentions the scale prescribed as per the

Secondary School Code. It is also mentioned therein that they shall be governed by the Secondary Grant-in-aid Code. They have accepted the

appointment letters and the conditions of service. Therefore, they are estopped from contending that the said Secondary School Code is not

applicable to them. It is denied that they have no choice. It is pointed out that from day one they are treated as falling in different cadre.

6. It is also pointed out that the clerical staff working in the municipal secondary schools is directly attached to those schools, while the clerical staff

in the primary schools is not attached. There is a centralised staff at Ward level and Head Office level for primary schools. It is stated that the

members of petitioner No. 1 are paid leave travel allowance and ex-gratia (bonus) even though they are not entitled to it. It is denied that the

employees of the municipal secondary schools are not treated as employees of the Municipal Corporation. It is accepted that they are municipal

employees, but falling in different category. It is denied that the qualifications and dudes performed by the said non-teaching staff in the municipal

secondary schools and by the clerical staff in the municipal primary schools are identical. It is also denied that their responsibilities is the same or

higher. It is denied that the Municipal Commissioner had any time agreed or accepted that the employees of the municipal secondary schools shall

be given the pay-scales and other benefits as the clerks of the primary schools. It is denied that the non-teaching employees of the municipal

secondary schools are entitled to be treated on par with the municipal employees or that they are entitled to be given the benefits of municipal

service conditions.

7. By filing Affidavit-in-Rejoinder it is stated on behalf of the petitioners that the appointments of employees of the Secondary Schools run by the

Municipal Corporation are from the Joint Select List maintained by the Municipality and they are appointed to various Departments. It is further

stated that though the Municipal Corporation is required to run the primary schools mandatorily or statutorily and not secondary schools, it should

make no difference. The Municipal Corporation is not barred from giving service conditions to non-teaching staff of the Secondary Schools which

are applicable to other clerical staff of the Corporation. Similarly, getting 100% Grant from the Government for the Secondary Schools would also

make no difference. It is pointed out that the State Government has made clear as far back as in 1978 that the secondary schools run by the

Municipal Corporation has to follow only the pay-scales and qualifications meant for other private secondary schools.

8. It is averred that the provisions of the M.E.P.S. Act are not applicable to the employees of the Secondary Schools run by the Municipal

Corporation. It is pointed out that by the general agreement arrived at on 2-8-1996 between the Municipal Corporation and the various Unions, it

was agreed that with effect from 1-4-1995 those employees working in the municipal secondary schools, who opted for the municipal pay-scales

and allowances will be given. But those who have opted and accepted the Maharashtra Government pay-scales and those recruited after 1-1-

1996 would be excluded from it. It is stated that pursuant thereto, an amount of Rs. 3000/= was paid to the employees in September 1996. It is

stated that the Municipal Corporation runs the school upto VII Std. The primary schools are only upto IV Std. The classes, therefore, attached to

such schools above IVth Std. do not form part of the primary education. Even then, non-teaching staff working therein is paid the pay-scales of the

municipal employees. There is no reason to treat the employees of the municipal secondary schools as forming a separate class. There is no basis

or any reason. It amounts to hostile discrimination violating the fundamental rights guaranteed under Article 14 of the Constitution of India. It also

violates the principle of Equal Pay for Equal Work.

9. A further Reply is filed on behalf of the Corporation dated 17th August 2001. It has been pointed out that the primary schools are run by the

Municipal Corporation as statutory duty and as the Constitution provides that free and compulsory education should be given to the children upto

the age of 14 years. Therefore, the Municipal Corporation is not only running the primary schools, but also gives aid to private primary schools as

permissible to it under law. It has been pointed out that hierarchy of posts in respect of primary schools is Clerk, Head Clerk and Office

Superintendent. They are part of the normal cadre of the Corporation and interchangeable with other clerical staff of the Corporation. They are

attached to Ward office or the Head Office. It has been pointed out that the secondary schools non-teaching staff at all times been treated as

completely separate and distinct cadre which is not attached to the Ward Office or Head Office. The clerical staff of the municipal secondary

schools are attached to the schools themselves and work in that school.

10. The hierarchy of promotion in the municipal secondary schools is Junior Clerk, Senior Clerk, Head Clerk and Office Superintendent. It is

pointed out that the Rules of Recruitment and methods of promotion are different for the clerical staff of the Corporation, Corporation''s primary

section and those in the municipal secondary schools. The clerks are first appointed as Apprentice Clerks and then promoted as Clerks in the

primary section. The clerks in the primary section are required to pass S.S.C. Examination with English and they have also to pass promotion tests

conducted by the Corporation. For every promotion, departmental examination is provided. Similarly, Recruitment Rules prescribed that Library

Clerks shall be appointed by direct recruitment who possess qualification of S.S.C. and Diploma in Library Science. The post of Librarian is filled

from qualified library clerks or direct recruitment. Post of Head Clerk is filled in by promotion from the Clerks who have passed departmental

examination for Head Clerk. Once in 1986 an exception was made. Similarly, the post of Office Superintendent is filled in by way of departmental

promotion. There are separate and distinct Recruitment Rules for clerical and supervisory cadre in the Corporation. They apply to those who are

working in the primary section. There is no such promotion to the post of Senior Clerk, Head Clerk or Office Superintendent in the municipal

secondary schools. Promotion takes place only on the basis of seniority-cum-merit and it is as per the provisions of Secondary School Code

framed by the Government of Maharashtra. It is pointed out that an attempt was made by the Municipal Corporation to introduce departmental

test for the post of Head Clerk and Office Superintendent in the Municipal Secondary Schools. But this was resisted by those employees and they

had boycotted the examination. In 1983 the Municipal Corporation took a decision to prescribe written departmental test for promotion to the

post of Head Clerk and Office Superintendent and it was because of the Government letter dated 29-9-1978 (Exh. ""C"" to the Petition). The

Government gave No-objection for it and accordingly, the test was held for the post of Head Clerk in October 1983, but all those working in

secondary school failed. Once again it was held in 1988 after giving sufficient time, but it came to be boycotted by the non-teaching staff of the

Municipal Secondary Schools. The Union itself requested that the written test be dispensed with in respect of those employees. Therefore, they

have themselves accepted it that the Municipal Secondary Schools are separate and distinct cadre having its own hierarchy, promotion avenues

and mode of promotion. It is denied that appointments are made from joint selection list. It is stated that recruitment rules and channel of promotion

are different.

11. It has been stated that Std. I to IV are considered to be Lower Primary, while Standards V to VII are considered Upper Primary, Article 45

of the Constitution of India lays down the directive principles that a child until the age of 14 years should be given free and compulsory education.

The Corporation has already established 890 primary schools prior to the introduction of the Constitution offering education from 1st to VIIth

Standards. They were considered as primary classes and there is no possibility of discontinuing them nor restricting them only upto to the IVth

Class in view of the said directive principles of the State Policy. But when the Maharashtra Government made English compulsory from Vth

Standard onwards, the primary schools established after that date do not have Standards V to VII. Now, they are restricted to Standards I to IV.

There are nearly 310 such schools.

12. It has been next pointed out that this petition came to be filed in 1988 by the Maharashtra Shramik Sena representing non-teaching clerical

staff of the Municipal Secondary Schools. It is headed by Shri Madhukar Sarpotdar. There is another Union known as ''Mahapalika Madhyamik

Shikshak Sangh'' representing teaching staff. It is also headed by Shri Madhukar Sarpotdar. He formed a composite Trade Union known as

''Mahapalika Madhyamik Shikshak and Shikshaketar Karmachari Sena (M.M.S.S.K.S.). It now represents all the employees of the Municipal

Secondary Schools, both teaching and non-teaching. The petitioners are also members thereof. It is pointed out that after recommendations of the

5th Central Pay commission were accepted by the Government of Maharashtra, the said M.M.S.S.K.S. representing the teaching and non-

teaching staff by letters dated 4-1-1999 and 20-9-1999 demanded the pay-scales as per the 5th Pay Commission and be made applicable to all

the employees of the municipal secondary schools. The Corporation by its Circular letter dated 16-11-1999 extended the benefits of the said 5th

Central Pay Commission with effect from 1st April 1999 in the beginning. The demand to give retrospective effect was also considered

subsequently, by letters dated 4-8-2000 and 6-11-2000 the question of retrospectivity and arrears was also worked out. The 5th Pay

Commission recommendations came to be implemented in respect of all the teaching and non-teaching employees of the Municipal Secondary

Schools. The arrears of Pay and Allowances as per the 5th Pay Commission recommendations are also paid to all from 1st January 1996. It is

pointed out that the said M.M.S.S.K.S. itself demanded the application of the 5th Pay Commission. The Corporation has granted the same and all

the employees have acceded to it.

13. It is also submitted that the petitioner No. 1 is not now functioning or representing the employees and hence, not entitled to conduct the

petition. It is denied that appointments are made from the Joint Selection List.

14. By filing further Affidavit dated 7th September 2001 it is pointed out on behalf of the petitioners that the extension of the 5th Pay Commission

recommendations to the teaching and non-teaching employees of the secondary schools is not going to resolve the issue. It is pointed out that on

14th October 1999, a meeting was convened by the Hon''ble Mayor and as recommended by him, it was accepted during the pendency of the

decision on the issue. It is further pointed out that in 1983, respondent No. 1 decided to introduce the Departmental Promotion Test for the post of

Head Clerk. This was on the condition that the pay-scales and pensionary benefits offered to other employees of respondent No. 1 shall be given.

Hence, they appeared for the written test, but all of them failed. This showed some oblique motive.

15. Ordinarily, we would have rejected this petition on the short ground that in the affidavit filed on behalf of the respondents dated 17th August

2001, as pointed out above, this petition was filed in 1988. Petitioner No. 1 was representing the non-teaching staff i.e. Junior Clerks, Senior

Clerks and Librarian working in the municipal secondary school. It was headed by Shri Madhukar Sarpotdar. There was another Mahapalika

Madhyamik Shikshak Sangh representing teaching staff in the said schools. Shri Madhukar Sarpotdar was also heading it. The composite Trade

Union known as ''Mahapalika Madhyamik Shikshak and Shishaketar Sangh'', which now represents both teaching and non-teaching employees of

the municipal secondary schools. It is clear from the demand letter dated 4-1-1999 of the said M.M.S.K.S. that demand was made that the 5th

Pay Commission should be made applicable to the teaching and non-teaching staff of the secondary schools as this has been done in the case of

secondary school by the State Government. The demand is not conditional one. As this was not acted upon, a further letter dated 20th September

1999 was also addressed by the said Sena. It was in fact a threat to the Corporation that if the 5th Pay Commission is not made applicable before

30th September 1999 and amount is not received by 15th October 1999, the employees shall resort to agitation. It is also not conditional.

Pursuant to that, in the beginning, the Corporation issued a Circular dated 16-11-1999 giving the benefits of the 5th Pay Commission scales

prospectively from 1st April 1999. Later on, further circular/letters were issued on 4th August 2000 and 6th November 2000 giving benefit

retrospectively from 1-4-1996 and arrears were also worked out. All the employees i.e. teaching and non-teaching employees of the municipal

secondary schools were paid accordingly. They received all the arrears of pay and allowances as per the 5th Central Pay Commission

recommendations. This was in respect of all other private secondary schools.

16. By filing an affidavit, as pointed out an attempt was made to show that this has been done without prejudice to their rights and contentions to

receive the scale given to the other municipal employees, reliance is sought to be placed on the meeting dated 14-1-1999 held by the Mayor. It is

clear that the Mayor was more concerned to see that there was no agitation and it was recorded in the said Minutes that the teaching and non-

teaching staff may be given the benefits of the 5th Pay Commission from November 1999 and the discussion regarding the payment as per the

municipal scale may be continued. Obviously, this was because earlier by letter dated 30th December 1995, an option was given to those

employees who were in service on 1st April 1995. They were asked either to accept the municipal pay-scale and the retirement benefits along with

all other conditions of service or, they were asked to accept the Secondary School Code of the Maharashtra Government and the pay-scales and

pension etc. This was available to those employees who were employed prior to 1-1-1996. However, admittedly, none has given any option and

no further action has taken place. Therefore, it is not possible to accept that they accepted the said 5th Pay Commission without prejudice to claim

the municipal pay-scale etc. payable to the non-teaching staff of the primary schools or other departments. There is no dispute that the teaching

staff is also paid according to the 5th Pay Commission. Their pay-scales and service conditions are as per any other teaching staff working in

private secondary schools. Therefore, there is no reason to hold that the non-teaching staff of the municipal secondary schools is entitled for pay-

scales and service conditions as per the non-teaching staff in the primary school or other departments.

17. We find that even on merits there is no substance in this petition. It is not possible to hold that non-teaching staff in the secondary schools is

given any discriminatory treatment by the Corporation on the principle of equal pay for equal work is attracted here. It is clear that from day one

they are treated as forming a separate cadre. It is clear that primary schools were in existence for nearly a century. This was a part of the

mandatory duty imposed upon the Municipal Corporation u/s 61 (q) of the B.M.C. Act. It has undertaken the discretionary work of running the

secondary schools in 1965 provided u/s 63(b), Initially, the non-teaching staff was taken from various departments of the Corporation. In 1972 the

State Government started giving 100% aid for running those schools and the staff members came to be recruited. The appointment order, which is

annexed at Exhibit ""A"", itself makes it very clear that their service conditions are to be governed by the Secondary School Code. Each one of them

has unhesitatingly accepted it. It is also clear that the non-teaching clerical staff working in the primary section is not attached to the said school. It

comes from the common pool and hence, transferable to other departments. However, the clerical staff working in the municipal secondary

schools is attached to it. In the case of Librarian, there can be no such transferability at all as it requires the special qualification of Library Diploma.

It has not been pointed out that the work carried out by the clerical staff or the non-teaching staff employed in the municipal secondary schools is

the same as that of the municipal primary schools. Only an attempt is made to point out what they are required to do and even it is clause No. 5 of

the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 Schedule I framed under Rule 22(1). These duties are required

to be performed by all the clerical staff employed in the private secondary schools. Further, what is the work done by the clerical staff in the

primary schools is not even pointed out. The broad category may be of a clerk or a Librarian, but that cannot help the petitioner to contend that

the non-teaching staff of the municipal secondary school was discriminated as they are carrying on same work. Further, except the bare assertion

that their responsibilities are the same, there is nothing to point out the same or to establish it. It is also not pointed out that the qualifications, which

are required for both are the same. Merely because disciplinary action is taken against such non-teaching staff employed in the municipal

secondary school of the Corporation under the Corporation Rules and not under the Maharashtra Employees of Private Schools (Conditions of

Service) Rules 1981, does not mean that they are entitled for getting the pay-scales and all other benefits as per the other employees. In fact, the

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act by Section 2(20) makes it clear that a School run by the

Government or the Local Authority is not covered under the Act. The Secondary School Code also makes no specific provision about it.

Therefore, the Municipal Corporation has adopted the said procedure and we find nothing wrong in it or can give any handle to the petitioners to

claim equality.

18. The channel of promotion is also totally different. In the case of non-teaching staff of the municipal secondary school, the channel of promotion

is Junior Clerk, Senior Clerk, Head Clerk and Office Superintendent. It is, therefore, wrong to assert that there is no promotion available to a

Clerk. In the case of primary section, the hierarchy of promotion is Clerk, Head Clerk and Office Superintendent. The promotion for the non-

teaching staff in the municipal secondary schools is based upon seniority-cum-merit. No tests for promotion are provided. However, in the case of

non-teaching, staff employed in the primary schools, at every stage departmental examination is provided. In fact, in 1983 an attempt was made by

permitting the clerical staff from the municipal secondary schools to appear for the examination of Head Clerk. But all of them failed. Again an

attempt was made in 1988 to introduce the said examination, but all of them boycotted it. It is easy to allege that, because all of them failed in the

examination in 1983, the Municipal Corporation had determined to fail them. However, it is not possible for us to accept it as some others who

appeared passed. Therefore, it is clear that the non-teaching staff of the municipal secondary schools does not want to appear for the promotion

test and at the same time wants the pay-scales and other benefits extended to the non-teaching staff employed in the primary schools and other

departments of the Corporation.

19. There is no merit in the contention that merely because Vth to VIIth standards are attached to the primary schools, they cannot now be called

as primary schools. Hence, the non-teaching staff in the municipal secondary schools is entitled to get the pay-scales and other benefits available to

those employees. It is clear that before 1965, it was considered as lower primary and upper primary school. The lower primary consisted of I to

IV classes and the higher primary from V to VII classes. They were joint and so established by the Municipal Corporation. They are 810 in

number. This was in view of the mandatory duty and this was continued in view of the directive principles contained in Article 45 of the

Constitution which directed that children upto 14 years should be provided with free and compulsory education. It is wrong to suggest that this

burden is cast upon the State Government only. However, after 1972, 310 primary schools are established by the Municipal Corporation and they

are all upto I to IV standards. Obviously, it is not possible for the Municipal Corporation to close down those Standards V to VIII in these 810

schools. They cannot be separated. Further, non-teaching staff is not employed separately for I to IV Class and V to VII Classes and hence, the

Municipal Corporation is rightly extending the benefits of pay-scales etc. to the said non-teaching staff as available to the non-teaching staff of the

primary schools.

20. An attempt is made also to show that the Municipal Corporation gives grant to the private primary schools and the non-teaching staff

employed there also gets the pay-scales available to the non-teaching staff employed in the municipal primary schools. An attempt is also made to

show that the Corporation spends a lot of amount in this. It is clear that the mandatory duty of the Municipal Corporation which has been taken up

by some private institutions and hence, the Municipal Corporation is giving the grant to enable those schools to give the pay-scales etc- This does

not mean that the non-teaching staff of the municipal secondary schools are entitled to get the same pay scales etc. Further, merely because certain

benefits" are given to the non-teaching staff of the municipal secondary schools as in case of other B.M.C. employees, it does not mean that all

other benefits, pay-scales, pension and retirement benefits are required to be paid as per the Municipal Rules. In fact, it has been pointed out on

behalf of the Municipal Corporation that certain benefits have been wrongly extended. Therefore, we find nothing wrong in giving the pay-scales,

casual leave, pension and retirement benefits as per the provisions made by the State Government. The same are extended to all other non-

teaching staff of the private secondary schools who are working in the similar manner. Further, the teaching staff has also unhesitatingly accepted

the said pay-scales etc. In this respect, there is no difference between the teaching staff of the municipal secondary schools and private secondary

schools. It is not possible to hold that the principle of equal pay for equal work is attracted or the fundamental right of the petitioners under Article

14 of the Constitution of India has been violated.

21. The averment came to be made for the first time in the Rejoinder that the non-teaching staff in the secondary schools is taken from the central

list. It has been denied by the Municipal Corporation. It is to be noted that no such averment is to be found in the Writ Petition or in the

representation made by the petitioners to the Municipal Corporation earlier. It is to be further noted that where Municipal Corporations asked the

petitioners to give option either for scales as per the Government Secondary Schools or as per the Municipal Corporation, none came forward to

exercise it and now this claim is pressed after accepting the pay-scales etc. prescribed by the 5th Pay Commission as adopted by the State. The

non-teaching staff in the municipal secondary schools forms a class by itself separate from the non-teaching staff in the primary schools of the

Corporation. From day one, their pay-scales, method of recruitment, promotion and channel of promotion etc. differ. It is also not shown that the

work done by them is the same. The principle of equal pay for equal work is not attracted. The categorisation or classification is quite reasonable.

In the case of non-teaching staff of the municipal secondary schools, Clause 57.7 of the Secondary Schools Code provides that the pay-scales for

clerical staff will be as approved by the Government. Clause 68.5 also provides that pay-scales of teaching and non-teaching staff shall be as laid

down by the Government from time to time. Appendix 10 gives the pay-scales for clerical staff and Librarian Assistant as prescribed by the

Government.

22. Now, we shall refer to the various Judgments cited by both the sides. However, at the outset, we may note that essentially the question is

considered in every case against the factual background.

23. The learned Counsel for the petitioners heavily relied upon the un-reported Judgment of the Division Bench of this Court in Special Civil

Application No. 2241 of 1974 dated 27th February 1976. In the said case, prior to 30th September 1967 the Municipal Corporation was having

its own Family Planning section. The employees of the petitioner No. 1 Union were employed in the said section. After 30th September 1967, this

section was converted into a Family Planning Unit. This was done in view of the Scheme brought into force and financed by the Government of

India. Petitioner No. 1 Union raised several demands. The Municipal Corporation took up the defence that the employees are not the employees

of the Corporation as the Scheme was financed by the Union of India through the State Government. The State Government and the Union

Government also did not admit that they were their employees. Against this background, it was held that the finance given by the Union of India for

the scheme makes no difference and they continued to be the employees of the Corporation. This has nothing to do with the question raised in the

petition. It is not disputed by the Municipal Corporation here that the non-teaching staff in the secondary schools is of the Municipal Corporation.

24. The learned Counsel for the petitioners then relied upon the Judgment of the Division Bench of this Court reported in 1988 2 CLR 329. In the

said case on 29-4-1977, the Medical Council of India passed a Resolution that all the medical teachers in the affiliated Medial Colleges should be

given the University Grants Commission (UGC) scales of pay, plus dearness allowance (D.A.) etc. This was accepted by the State government.

On 4-9-1997 the Municipal Corporation passed a Resolution applying the U.G.C. Scales to the medical teachers from 1-10-1977. By a Circular

dated 15-7-1978 Leave Travel Assistance (L.T.A.) paid to the medical teachers came to be withdrawn by the Municipal Corporation. This was

challenged. It was contended that they were entitled to get the L.T.A. like any other municipal employees. It was noted that the L.T.A. was not

paid only on the ground that they were case was governed by the U.G.C. scales. This cannot apply here. We have already pointed out the various

differences between the two categories of employees i.e. non-teaching staff in the secondary schools and the non-teaching staff of the primary

schools and other Departments of the Corporation.

25. The learned Counsel for the petitioners then relied upon the Judgment of the Apex Court reported in 1982 (i) L.L.J. Pg. 344 Randhir Singh v.

Union of India and Ors. In the said case, the petitioner was a Driver Constable in the Delhi Police Force working under the Delhi Administration.

He demanded that his scale of pay should at least be the same as the scale of pay of other drivers in the service of the Delhi Administration. The

3rd Pay Commission considered the claims of all the drivers as a common category. After considering the qualifications etc. possessed by the

drivers, the Commission proposed the pay-scales for various categories of drivers like the drivers of Light Motor Vehicles, the drivers of Heavy

Motor Vehicles etc. It was also considered that the duties, responsibilities and functions were of the same nature of the petitioner. Hence, it was

held that there is no reason to discriminate and the petitioner was entitled to it.

The learned Counsel for the petitioners then relied upon the Judgment of the Apex Court reported in 1987 (1) C.L.R. pg 124, Eeos Mercantile

Corporation Madras v. Secretary, Ministry of Labour, Government of India, New Delhi and Anr. In the said case, the daily wage labourers were

working several years on meager wages. They claimed that they were entitled to get wages as permanent employee employed to do the identical

work. As the work carried on by them was identical in nature, it was held that they were entitled for the same.

The learned Counsel for the petitioners relied upon the Judgment of the Apex Court reported in M/s. Mackinnon Mackenzie and Co. Ltd. Vs.

Audrey D"costa and another, . A female confidential stenographer filed a petition under Sub-section (1) of Section 7 of Equal Remuneration Act,

1976 complaining that she was paid remuneration at lesser rate than those of male stenographers, who were also performing the same or similar

work. The Apex Court noted that in order to implement Article 39(d) of the Constitution of India and the Equal Remuneration Convention, 1951

the President promulgated on the 26th September 1975 Equal Remuneration Ordinance 1975 as International Women''s Year was celebrated.

The Ordinance became Act and received President''s assent on 11th February 1976. It provided for payment of equal remuneration to men and

women workers for the same work or work of a similar nature. This was for preventing discrimination on account of sex. Therefore, the prayer of

the petitioner, as granted by the High Court, came to be upheld by the Apex Court.

The learned Counsel then relied upon the Judgment of the Apex Court reported in 1988 2 CLR 83Jaipal and Ors. etc.etc. v. State of Haryana and

Ors. The Supreme Court was considering whether the Instructors under the Adult and Non-formal Education Scheme are entitled to the pay-

scales applicable to squad teachers of the Social Education Scheme on the basis of the doctrine of ''Equal Pay for Equal Work''. It was found that

the Instructors and Squad teachers carried on similar work under the same employer in the same Department. The Instructors were only paid fixed

pay of Rs. 200/- per month, while the Squad teachers were paid scales of Rs. 420-700. Hence, it was held that the Instructor were entitled to get

the same scales and there was violation of the doctrine of ''Equal Pay for Equal Work''. In the facts of our case, these Judgments are not attracted.

26. The learned Counsel for the Respondents first relied upon the Judgment of the Division Bench of this Court in Appeal No. 321 of 1986, dated

25th March 1992. In the said case, the question arose whether a teacher in the Medical College run by the Municipal Corporation is entitled to get

the allowance known as medical aid in cash. Such allowance was paid to other employees of the Municipal Corporation. After considering the

earlier Judgments, the Division Bench held --

Thus, the Medical teachers of Municipal Medical colleges form a special class of municipal employees whose terms and conditions of service are

equated with such terms and conditions of service obtaining to medical teachers in Government Medical Colleges. They, therefore, form a

completely different category of municipal employees. Their service benefits, including allowances, cannot, therefore, be compared with service

benefits and allowances of other municipal employees who are on different scales of pay and who have different allowances. In our view,

therefore, it is not open to the Municipal medical teachers including the Respondent to contend that any separate allowance which is given to the

other municipal employees must be extended to them also. The Respondent and the other medical teachers of the Municipal Corporation form a

distinct class along with the other Medical teachers in Government Medical Colleges who are governed by the University Grants Commissioner

scales of pay. Their pay scales and allowances are revised from time to time on a different basis altogether. In our view, therefore, the Respondent

was not entitled to claim medical aid in cash simply because the other municipal employees were granted such allowance"".

In our opinion, this is on all fours in the present case. The non-teaching staff working in the municipal secondary schools are governed by the

Secondary Schools Code. From day one they have been treated separately in case of pay-scales, recruitment, channel and method of promotion

etc. They are given the pay-scales and other benefits as payable in case of other private secondary schools, recognized and aided by the

Government. The non-teaching staff has accepted the 5th Pay Commission pay-scales as adopted by the State. Therefore, they form a distinct

class along with such teachers and cannot be equated with the non-teaching staff in the primary schools of the Corporation or other departmental

employees.

27. The learned Counsel for the respondents also relied upon the Judgment of the Apex Court reported in AIR India Vs. Nergesh Meerza and

Others, The question arose whether Air Hostesses and Assistant Flight Pursers in Air India or Flight Stewards in Indian Airlines Corporation form

separate categories though both are members of the same cabin crew. It was held that differential treatment meted out to Air Hostesses would not

attract the equality clause. The Apex Court considered the various cases and after detailed examination laid down the propositions where equality

clause or Article 14 is attracted. It was held that Article 14 forbids hostile discrimination, but not reasonable classification. It was observed --

39. (6) In order to judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be

examined:

(a) the nature the mode and the manner of recruitment of a particular category from the very start,

(b) the classification of the particular category,

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not to be found in other classes and the like.

Applying the above tests laid down by the Apex Court to the facts of our case, as stated above we find that the non-teaching staff in the municipal

schools forms a separate category or class.

28. The learned Counsel for the respondents also relied upon the Judgment reported in Mew Ram Kanojia Vs. All India Institute of Medical

Sciences and Others, in which it was held that the doctrine of ''Equal Pay for Equal Work'' is inapplicable where the employees claiming parity

have been classified as constituting a distinct and separate category based on difference in educational qualifications. It was held that such

difference justified difference in pay-scales and the burden of proof lies on the person claiming parity.

29. In view of the above, it is not possible for us to accept that the petitioners have succeeded in substantiating their claim. They have failed to

establish that non-teaching staff in the secondary schools in the Corporation are required to be treated on par with the non-teaching staff in the

primary schools or clerks in other departments of the Corporation.

This petition is, therefore, dismissed with costs.