



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.851 OF 2026

Smt. Rubina Jabeen d/o Shaikh Azizuddin

Age: 37 years, Occu.: Service,

R/o. House No.8-22-408, Babar Colony,

Aurangabad.

Presently R/o. Syed Mazhar H.No.1-13-65-P,

P.No.95, Behind Hashmi Masjid,

Bismillah Colony, Chati, Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra

Through its Secretary,

School Education and Sports

Department, Mantralaya,

Mumbai-32.

2. The Deputy Director of Education,

Aurangabad Division, Aurangabad.

3. The Education Officer (Primary),

Zilla Parishad, Aurangabad.

4. The Citizen's Educational and

Welfare Council, Aurangabad,

Through its President/Secretary

.. Respondents

...

Mr. S. S. Kazi, Advocate for the petitioner.

Mr. S. B. Pulkundwar, AGP for respondent Nos.1 and 2/State.

...

CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.

RESERVED ON : 25 FEBRUARY 2026

PRONOUNCED ON : 17 MARCH 2026

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. In view of our order dated 29.01.2026, we have heard the learned Advocate for the petitioner on the point of limitation. Here, the petitioner has made following prayer :-

“(B) By issuing writ of mandamus or any other writ or direction in like nature, the respondent Nos.1 to 3 be directed to release/pay Honorarium amount from 02.02.2017 to 01.02.2020 and Regular Salary from February 2020 to December 2023 and backwages and pay regular salary to the petitioner as a permanent employee as Assistant Teacher.”

2. The petition has been filed on 29.04.2025 and, therefore, the question arises as to whether past honorarium and part of the regular salary can be granted and whether cognizance in this regard can even be taken by this Court at the initial stage. Learned Advocate for the petitioner relies upon the three Judge Bench decision of the Hon’ble Supreme Court in **Vinod Sharma and others Vs. Director of Education (Basic) U.P and others, (1998) 3 SCC 404**, wherein the issue was that the appellants therein were not paid the salary for many years. However, it is to be noted that in paragraph No.11 of

the aforesaid decision, it has been specifically observed that :

“11. It is not that the appellants are not entitled to the payment of any salary. They are, but prior to bringing them under the said Act this obligation is only on the recognised school under the aforesaid Rule 10 of the 1975 Rules. But by the said High Court judgment the respondents were bound to bring them under the Payment of Salary Act and pay their salaries accordingly. This cannot be denied by the State. But in spite of this, nothing was done in this regard.”

Therefore, it was the question of bringing the appellants under the enactment and after they were brought, then it was held that the appellants therein were entitled to the salary. Further reliance has been placed on the decision in **Dharam Singh and others Vs. State of U. P and another, 2025 SCC OnLine SC 1735**. It appears to be the case wherein the employees were outsourced and there was an issue of sanction to the post which was then refused by the State on the ground of financial constraints. In this case, the directions were given for regularization and creation of supernumerary posts, financial consequences and arrears, retired appellants, deceased appellants and compliance affidavit. He further rely on the decision of the Hon'ble Single Bench of Punjab and Haryana High Court in **Gurlabh Singh Vs. State of Punjab and others, 2026 SCC OnLine P & H 634**, wherein it has been observed that denial of arrears of salary be considered as violation of

fundamental rights.

3. Here, it is to be noted that the petitioner submits that she was appointed on clear and vacant post in the minority institution/respondent No.4. The post of Assistant Teacher in respondent No.4 was created in Allama Shibli Urdu Primary School at Aurangabad on aided basis. Considering the nature of vacancy, the petitioner was then duly selected and appointment order was issued on 01.02.2017. The approval came to be granted in favour of petitioner by letter dated 31.03.2017 on honorarium of Rs.6,000/- per month. The petitioner was hopeful that she would receive regular salary, but she has not received the honorarium from 02.02.2017 to 01.02.2020 and regular salary from February 2020 to December, 2023. She has approached the Management on several occasions. She has even cleared Central Teacher's Eligibility Test (CTET) in January 2024. She is receiving the regular salary from December 2024 and on one occasion i.e. on 07.01.2025 she received amount of Rs.5,50,210/- in her account, but she is not aware about, for which period salary she has received the said amount. Since the respondents are not clearing the honorarium as well as the regular salary, she has approached this Court.

4. As aforesaid, and at the cost of repetition, the documents disclose that the petitioner came to be appointed by an appointment letter dated

01.02.2017. The order dated 31.03.2017 passed by respondent No. 3 – Education Officer shows that the appointment was on honorarium basis from 02.02.2017 to 01.02.2020, i.e., the said three-year period was considered as her appointment as Shikshan Sevak on a vacant aided post. That means, the petitioner intends to say that from 02.02.2020, she ought to have been given the regular pay. Even if we consider these orders, we must consider that the period of three years would be the limitation for claiming arrears. We would rely on the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh and others Vs. Yogendra Srivastava, (2010) 12 SCC 538** wherein it has been observed that the statutory rules prescribing allowance percentage override executive orders and appointment letters; accrued benefits under rules cannot be retroactively removed but arrears are subject to a three-year limitation. Even in respect of higher allowances, it has been observed that the claim for higher allowance is permissible prospectively from the date of application, however, recovery of arrears for past periods is subject to limitation.

In **Shiv Das Vs. Union of India and others, (2007) 9 SCC 274**, the Hon'ble Supreme Court held that while pension claims have a continuing cause of action, filing of a petition after an unreasonable delay (e.g., over three years) can lead to rejection or restricted relief. In this case, the matter was relegated to the High Court for consideration, but it was specifically

stated that if the arrears are granted by the High Court, then it should not exceed three years prior to the filing of the writ petition. Certainly, these decisions are binding on this Court. Now, taking into consideration this law point, we do not find that the petitioner is then entitled to get the honorarium between 02.02.2017 to 01.02.2020 as the said claim is beyond the period of limitation as well as the regular salary from February 2020 to 29.04.2022. We are, therefore, entertaining this petition only for the period from 29.04.2022 to 29.04.2025 i.e. for the alleged arrears accruing from 29.04.2022.

6. List the matter for further consideration on 15.04.2026.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm