

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

53 WRIT PETITION NO.7177 OF 2021

BABY SUBHASH GADEKAR
VERSUS
THE STATE OF MAHARASHTRA & OTHERS

...
Advocate for the petitioner : Mr.V.V.Gujar
AGP for Respondent-State : Mrs.M.A.Deshpande

...
**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 18.04.2022

P.C. :

1. The petitioner seems to be having a marital discord with respondent no. 5 and is residing away from him for more than 20 years. Her son is probably an adult, today.

2. The learned Advocate for the petitioner submits that he is not aware as to the age of her son. He concedes that her husband has two sons from another lady and both these sons, namely, Gokul and Satish, have been nominated in the pension papers of the husband.

3. What we find from the facts are that at least one son of respondent no. 5 from another lady, namely, Sunita Raghunath Tupsaunder, is more than 21 years of age.

4. The Zilla Parishad has filed its affidavit in reply in which it is stated that this petitioner claims that she is the legally wedded wife of respondent no.5. The Zilla Parishad has taken a stand that respondent no.5 has exercised his option of nominating his two sons born from his relations with Sunita, as his nominees along with his mother, who has passed away.

5. It does not call for any debate that respondent no.5 would be entitled for pension during his lifetime. It is only after his demise, that an issue would arise as to who amongst the two women is the legally wedded wife meaning the first legally wedded wife. She may be entitled for the pension, subject to the nomination of the sons of respondent no.5, though born from the other woman, as being the legal heirs to seek a share in the pension, subject

to the Maharashtra Civil Services (Pension) Rules.

6. In view of the above, we do not find that the facts are clear before us so as to invoke our writ jurisdiction under Article 226 of the Constitution of India. Needless to state, the claim of the petitioner for pension would not arise during the lifetime of her husband. She is at liberty to avail of a remedy as may be permissible in law at the appropriate time.

7. This petition is disposed off.

[S.G.DIGE, J.]

[RAVINDRA V. GHUGE, J.]

DDC