

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16975 OF 2025

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Kum. Samarth Rajendra DighePetitioner

Versus

The State of Maharashtra & Ors.Respondents

Mr. Shrirang Katneshwarkar, Advocate for Petitioner.

Ms. Priyanka Chavan, AGP for State.

Mr. Narendra V. Bandiwadekar Senior Advocate a/w

Mr. Vinayak R. Kumbhar, Mr. Rajendra B. Khaire, Mr. Aniket

S. Phapale i/b Ms. Ashwini N. Bandiwadekar, Advocates for

Respondent No. 7.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.**

DATE : 22nd JANUARY, 2026

P.C. :-

1. On 15th December 2025, we had passed the following
order:-

1. *After hearing the learned Advocate for the Petitioner for quite some time, we find from his submissions that the Petitioner is born from the relationship of a woman, Smita, with the deceased, Rajendra. From the first marriage, the deceased has a daughter. From the relationship between Smita and Rajendra, the Petitioner is born, who is presently 16 years of age.*
2. *The learned Advocate for the Petitioner relies upon the Full Bench judgment of this Court in **Kamalbai W/o Venkatrao Nipanikar v/s. The State of Maharashtra and Ors.** to contend that though the first wife of the deceased is alive and is drawing the full pension, the Petitioner, who is a son born out of the illegitimate relationship between Rajendra and Smita, would have*

*a share in the pension. He further relies upon **Rameshwari Devi v/s. State of Bihar and Ors.***

3. *We find from paragraph nos.3, 5 to 8 and 13 to 15, of Rameshwari Devi (supra), that the deceased husband of Rameshwari Devi, namely Narain Lal, who died in 1987, had married Yogmaya Devi on 10th April, 1963. Since then, till his demise in 1987, he lived continuously only with Yogmaya Devi. He had four children from the said relationship. On these premises, the Hon'ble Supreme Court concluded that as he was living with Yogmaya Devi for almost three decades, the presumption of husband and wife can be drawn.*
4. *The learned Advocate for the Petitioner submits that no pleadings have been set out in this Petition as to whether the deceased Rajendra was residing only with Smita from 30th April, 2008, or whether his relationship with Smita was purely extra-marital and he continued to reside with Nirmala until his demise.*
5. *The Petitioner shall file an additional affidavit to make a statement in the light of the above. The affidavit shall be filed on or before 9th January, 2026.*
6. *Considering Rameshwari Devi (supra), if Smita was the lady who resided with the deceased Rajendra ever since his purported marriage with her, until his demise, thereby giving up Nirmala, we could consider the span of relationship between the two. If Nirmala was residing with the deceased till he passed away, Rameshwari Devi (supra) would be of no assistance to the present Petitioner. At the same time, we need to verify whether the employer of the deceased Rajendra can indicate from the service record as to whether he had nominated Smita or Nirmala, as his nominee for the pension and gratuity benefits.*
7. *It is only for the above purpose that we are **issuing notice to the Respondents**, returnable on **22nd January, 2026**. Considering the conspectus of the matter, this*

Petition would be listed in the "urgent supplementary board".

8. *The learned AGP waives service of notice on behalf of Respondent Nos. 1 to 5.*
9. *Besides service of Court notice, the Petitioner is at liberty to serve Respondent Nos.6 and 7, by all permissible modes of service.*
10. *Office objections, if any, to be removed, on or before 8th January 2026, failing which, this Petition shall stand dismissed without reference to the Court, on 9th January, 2026*

2. The learned Senior Advocate representing the legally wedded first wife, Smt. Nirmala, Respondent No.7, has produced the official records of the deceased which show that Nirmala has been nominated as a nominee of the deceased to receive all service benefits. The name and address mentioned, along with the name of Nirmala as a nominee, was the same first address of the deceased and Nirmala. Subsequently, they moved into a different accommodation, and the address is the one which is shown as the address of Nirmala in the cause title of the Petition. The remark in the statutory record indicates that Nirmala would get the complete share of all service and retirement benefits.

3. Nirmala is now 45 years of age. The Petitioner is the

son of Smt. Smita, who claims to have had a physical relationship with the deceased, Rajendra. The Petitioner was born on 24.02.2009 out of the said relationship. He would complete 18 years of age on 23.02.2027. By this Petition, he has claimed a share in the pension amount as well as the death-cum-service benefits.

4. With the above reproduced order dated 15.12.2025, we had called upon the Petitioner to indicate, keeping in view the law laid down by the Hon'ble Supreme Court in ***Rameshwari Devi v/s. State of Bihar and Others 2002 SCC 431***, as to whether Smita was in the company of the deceased for a long time and whether Nirmala had deserted Rajendra. Had Smita been residing with Rajendra for decades and had Nirmala deserted Rajendra, the Petitioner could have relied upon Rameshwari Devi (Supra).

5. The Statutory records which are unchanged until the demise of Rajendra in harness on 10.06.2020, indicate that Nirmala is his nominee. In the event of the death of Nirmala, the names of Komal, who is a biological daughter and Rajendra, son of Nirmala, along with Dattatraya Baburao, who is the paternal grandfather of Komal and the father-in-law of Nirmala, were added to the

nomination. The name of Smita is not found anywhere. Even considering the view taken by the Hon'ble Supreme Court in *Union of India and Another v/s. V. R. Tripathi (2019)14 SCC 646*, the case of the Petitioner sans merit. Paragraph 18 of the said judgment, on which the Petitioner relies upon, also does not support his case.

6. We could have dismissed this Petition in the light of the above. However, the learned Senior Advocate Shri. Bandiwadekar representing Smt. Nirmala, submits that Nirmala had already admitted to share a portion of Rs.12,21,431.79/- (out of a total amount of Rs. 38,16,974,37/- received by her towards death-cum-service benefits), with Samarth, who is the biological son of the deceased and Smita. This has been mentioned in the terms presented before the Civil Judge, Senior Division, Pune in Civil Misc. Application No.602 of 2020, below paragraph no.3.

7. Shri. Bandiwadekar submits that the said amount has already been paid to Smita, who is the guardian of Samarth. If any balance amount remains unpaid, the same would be verified and paid to Smita. Nirmala and Smita have, therefore, compromised in the proceedings before the Civil Judge, Senior Division vide their terms dated 17/02/2021, below Exhibit '50' in Civil Misc.

Application No.602 of 2020. Samarth would receive one-fourth of the entire pension amount from the date it became payable until 21/04/2027, when he attains 18 years of age.

8. The learned Advocate for the Petitioner Shri. Katneshwarkar submits that, the Petitioner is agreeable in view of Exhibit-50 and an order may be passed.

9. The application which the Petitioner has tendered to Respondent No. 3 stands withdrawn and disposed off by consent of Smita. Respondent No. 3 would now release the arrears of Pension to be paid to Nirmala within a period of 30 days from today. From these arrears, as per the understanding between Nirmala and Smita, one-fourth of the amount, would be transferred by Nirmala in the bank account of Samarth, who is a minor, under the guardianship of Smita. It is noteworthy that Smita is in employment with Respondent No. 6 as a Library Attendant and is drawing salary as per the pay scales applicable.

10. The fact that Smita is in employment was suppressed from the Court, which could have been a ground for dismissal of

this Petition with costs, in the light of the law laid down by the Hon'ble Supreme Court in *Kishore Samrite v/s. State of Uttar Pradesh, (2013) 2 SCC 398* and *Bhaskar Laxman Jadhav and Others v/s. Karamveer Kakasaheb Wagh Education Society, AIR 2013 SC 523*. Considering the compromise, we refrain from doing so.

11. Samarth would open a bank account with the assistance of Smita as his natural guardian and the bank account would stand in the name of Samarth under her guardianship with a nationalized bank. The said bank account details would be shared with Nirmala so as to enable her to transfer the amounts in the said account.

12. If there are any complaints pending or initiated by Smita and Samarth, the same shall stand withdrawn and disposed off. Respondent Nos. 2 to 6 would not entertain any complaint from Smita or Samarth with regard to the afore stated arrangement. The payment of regular pension to Nirmala would commence from the month of February as per rules. Nirmala would transfer one-fourth of the amount to the account of Samarth within 7 days of the pension amount being deposited in the account of Nirmala.

13. With the above understanding, settlement and directions, **this Petition is disposed off.**

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)