



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No.1337 OF 2025

1. Pradnya Wd/o Dashrath Warghane,
Aged About 45 Yrs,
Occu: Household.

2. Radha D/o Dashrath Warghane,
Aged About 10 Yrs, Occu: Student.

Both R/o C/o Shri. Kishore Mahadeorao
Surkar, Krishna Nagar, Wardha. : PETITIONERS

...VERSUS...

1. Zilla Parishad Wardha,
Administrative Building,
Dr. Ambedkar Square Wardha-01.

2. Chief Executive Officer,
Zilla Parishad Wardha,
Dr. Ambedkar Square Wardha-01. : RESPONDENTS

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Mr. A.J. Pathak, Advocate for Petitioners.
Mr. Dhiraj Bhoyar, Advocate for Respondent No.2.

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CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.

RESERVED ON : **22nd APRIL, 2026.**

PRONOUNCED ON : **27th APRIL, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of parties.

2. The present petition seeks a direction to the respondents to pay the family pension of the petitioners to the tune of 50% along with interest with effect from 11.03.2019.

3. Facts as can be seen from the petition are as under :

The petitioner No.2 was born on 23.01.2014 out of the wedlock between Dashrath Kawduji Warghane and the petitioner No.1, Pradnya Dashrath Warghane. The marriage of the petitioner No.1 with late Dashrath Kawduji Warghane was during the subsistence of the first marriage. Dashrath Warghane expired on 11.03.2019. Deceased Dashrath Warghane was working with the respondent Zilla Parishad.

4. Thereafter, to claim the legal dues of the deceased Dashrath, his first wife, namely, Kanchan Dashrath Warghane, and daughter Neha Dashrath Warghane moved an application for heirship certificate bearing M.J.C. No.83 of 2022. The 5th Joint Civil Judge, Senior Division, Wardha granted an heirship certificate to Kanchan Warghane, Neha Warghane, Jija Warghane (mother of deceased Dashrath) and the petitioner No. 2 i.e. Radha Warghane. Likewise, the 3rd Joint Civil Judge, Senior Division, Wardha, vide judgment dated 28.03.2022 granted a succession certificate to all these persons in Succession Case No.22 of 2019.

5. However, the respondents denied the pension to the

petitioners contending that the pension would be payable to the first wife i.e. Kanchan Dashrath Warghane. This prompted the petitioner No.2 to file a writ petition before this Court bearing Writ Petition No.2515/2023. This Court after hearing the parties passed an order on 21st February, 2024 thereby relegating the matter to the respondents to decide the claim of the petitioners therein in light of the fact that even though the marriage with petitioner No.1 may be illegal or void, that would not dis-entitle the petitioner No.2 to avail retirement benefits in view of Section 16 of the Hindu Marriage Act.

6. Thereafter, the petitioners called upon the respondents at various times for hearing and determination of share in the pension. The petitioners claimed that their share was to the tune of 50% of the Pension amount. However, vide letter dated 14.10.2024 on the basis of Succession Certificate, the respondents granted only 25% of the share to the petitioner No.2 only. This has prompted the petitioners to file the present petition.

7. We heard Mr. A.J. Pathak, learned counsel for the petitioners and Mr. Dhiraj Bhoyar, learned counsel for the respondent No.2.

8. Mr. A.J. Pathak, learned counsel for the petitioners submits that the decision of the respondents to pay pension only to the extent of 25% to the petitioner No.2 is clearly erroneous and,

therefore, liable to be set aside. He further submits that the respondent No.2 erred in law in calculating the pensionary benefits on the basis of succession certificate wherein it was clearly mentioned that it would not encompass the monthly pension as it is not a debt or security. He places reliance on Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules, 1982 to submit that when the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. He places reliance on a judgment of this Court reported in **2014 (7) ALL MR. 299 Kantabai w/o. Dhulaji Shriram and others Vs. Hausabai Dhulaji Shriram and others**, and judgment of the Hon'ble Apex Court in **AIR 2000 SC 735 Rameshwari Devi Vs. State of Bihar and others**.

9. Per contra, learned counsel for the respondent No.2 Mr. Dhiraj Bhoyar submits that the action of the respondent is perfectly legal and as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982. He submits that even though the succession certificate provides for 25% of the share, that is not the sole reason for granting the said share to the petitioner No.2. He places reliance on judgment of this Court in **2019 (3) Mh.L.J. 921 (Kamalabai w/o. Venkatrao Nipanikar Vs. State of Maharashtra and others)** to support his submission.

10. We have considered the contentions canvassed by the learned counsel for the respective parties and also gone through the record and the relevant statutory provision. Rule 62(7) defines Family pension as under :

“Family Pension means Family Pension, 1964 admissible under rule 116 and includes Family Pension, 1950 admissible under rule 117 to family of deceased Government servant.”

Thereafter Rule 116 (16) (b) (iii) defines family as under :

“(i)

(ii)

(iii) son who has not attained the age of twenty-one years and unmarried daughter who has not attained the age of twenty-four years, including such son and daughter adopted legally before retirement.”

11. It is an admitted position on record that the marriage of the deceased Dashrath Varghane with the petitioner No.1 was performed during the subsistence of the first marriage with Kanchan Varghane. It, therefore, follows that the petitioner No.1 is not the legally wedded wife of late Dashrath Varghane. In the judgment of Full Bench relied on by the learned counsel for the respondents the question was, “In cases to which the Maharashtra Civil Services (Pension) Rules, 1982 apply whether the second wife is entitled to claim family pension.” This has been replied by the Full Bench after taking into consideration the entire statutory provisions and the case laws. The Full Bench has expressly

answered that in case of the Maharashtra Civil Services (Pension) Rules 1982 apply, the family pension can be claimed by a widow who was legally wedded wife of the deceased employee. Second wife, if not a legally wedded wife would not be entitled for family pension, and if the second wife is legally wedded wife, then should be entitled for the family pension. In view of the authoritative pronouncement of the Full Bench interpreting the Rule 116 (6) (a) (i), we do not find any merit in the claim of the petitioner No.1, in light of the fact that she was not a legally wedded wife of late Dashrath Vardhane, the marriage having been solemnized during the subsistence of the first marriage. Thus, she cannot avail benefit of Rule 116 (6)(a)(i) of the Maharashtra Civil Services (Pension) Rules 1982.

12. However, as far as the petitioner No.2 is concerned, she would be entitled for share in the family pension. Now the question would be the extent of the share of the petitioner No.2. The respondents have granted share of 25% in the family pension to the petitioner No.1, even though she being a child born out of an illegitimate marriage. Admittedly, the first wife, daughter borne out of the said wedlock from the first wife and the mother are alive and they would also be having share in the family pension of deceased Dashrath. We could not find anything in the Rules that

would entitle the petitioners to get a share of 50% in the family pension of deceased Dashrath.

13. We, therefore, allow the present petition partly and pass the following order.

ORDER

(i) The writ petition is partly allowed.

(ii) The respondent No.2, Chief Executive Officer, Zilla Parishad Wardha, is directed to pay the petitioner No.2, 25% of the family pension of deceased Dashrath if not paid already and continue to pay the same till she is eligible as per the Maharashtra Civil Services (Pension) Rules, 1982.

(iii) The petition is disposed of.

(iv) Rule is accordingly partly made absolute. No order as to costs.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)