

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 480 of 2018**

(Arising out of order dated 05.04.2018 passed by learned Single Judge in Writ Petition (S) No.2830 of 2018)

1. Smt. Rekha Mishra, W/o Late Anand Mishra, Aged about 39 years.
2. Aryan Mishra, S/o Late Anand Mishra, Aged about 12 years.
3. Aarom Mishra, S/o Late Anand Mishra, Aged about 10 years.

Nos. 2 & 3 are minors through their natural guardian mother Smt. Rekha Mishra. All R/o BTI Road, Opposite Adiwais Hostel, Mahasamund, District Mahasamund (C.G.)

---- Appellants**Versus**

1. State of Chhattisgarh, Through its Secretary, Department of Education, Mantralaya, Mahanadi Bhawan, Naya Raipur.
2. The District Education Officer, District Mahasamund.
3. Smt. Surekha Mishra, Widow of Late Anand Mishra, Aged about 45 years, R/o Rameshwar Nagar, Bhanpuri, P.O. Birgaon, Raipur, District Raipur.

---- Respondents

For Appellants	:	Shri B.P. Sharma and Shri Anjeenesh Shukla, Advocates.
For Respondent Nos.1&2/State	:	Shri Yashwant Singh Thakur, Additional Advocate General.
For Respondent No.3	:	Shri Govind Deewangan, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Justice Pritinker Diwaker****Order on Board****Per Ajay Kumar Tripathi, Chief Justice****19.07.2018**

1. This writ appeal has been preferred against order dated 05.04.2018 passed by the learned Single Judge who has dismissed the writ application primarily on the ground that a second wife is not entitled to compassionate appointment and grant of pensionary benefits.
2. Facts did not seem to be under dispute that one Anand Mishra who was working in the Education Department of the State of Chhattisgarh died in harness on

21.09.2014. After his death dispute arose between one Surekha Mishra said to be first wife and Rekha Mishra who claims herself to be the second wife. There is a supposed to be a daughter from the first wife and two sons from the second wife. Submission of the counsel for the Appellants is that so far as succession is concerned that deals with the question of inheritance but in so far as employment is concerned it is a question of not only survival but the very essence of expectation which the wife had out of the relationship which she entered with the erstwhile employee.

3. So long as, the Hindu Marriage Act, 1955 stands in the present form and content a second marriage during the lifetime of the first wife however, cruel the first wife may be does not create any kind of right in favour of the second wife. The second marriage is a nullity and it continues to be so. In a relationship which had been entered into contrary to law and statute, no right can flow or can be decided on the touch stone of human or humane aspect of the matter.
4. The first wife has been granted compassionate appointment. So far as the children of the second wife is concerned application for succession was made succession was allowed in favour of the children alongwith the first wife and mother of the erstwhile employee since the High Court has held in their favour.
5. Law is well settled that children out of a wedlock of illegitimate marriage are not illegitimate, therefore, the view taken by the High Court to grant succession even in favour of the two children out of the second marriage may not be termed as erroneous. To that extent there cannot be any quarrel on the entitlement of the two children. But so far as the second wife is concerned whatever be the hardships and difficulties she may be facing in life, after the death of her husband, the Court cannot reach out to her beyond the law and ambit of the statutory provisions because compassion cannot replace statutory provisions.

6. The writ application, therefore, has been rightly dismissed refusing grant of benefit of compassionate appointment in favour of the second wife. So far as, share of pension and other post retiral dues are concerned that will be decided according the declaration made by High Court in Civil Revision Nos.172 of 2017 and 181 of 2017 in the judgment dated 12.02.2018.
7. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Pritinker Diwaker)
Judge