

ITEM NO.5

COURT NO.9

SECTION XI

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35659/2018**

**(Arising out of impugned final judgment and order dated 19-12-2017 in WA No. 33110/1992 passed by the High Court Of Judicature At Allahabad)**

**DIRECTOR OF HIGHER EDUCATION,  
MEMBER SECRETARY SCREENING COMMITTEE  
(REGULARISATION)**

**Petitioner(s)**

**VERSUS**

**VINAY KUMAR MISHRA & ORS.**

**Respondent(s)**

**(FOR ADMISSION and I.R. and IA No.157381/2018-CONDONATION OF DELAY IN FILING and IA No.157383/2018-EXEMPTION FROM FILING O.T. and IA No.157386/2018-CONDONATION OF DELAY IN REFILING )**

**Date : 05-04-2019 This petition was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE MR. JUSTICE AJAY RASTOGI**

**For Petitioner(s)**

**Mr. Pramod Swarup, Sr. Adv.  
Mr. Harendra Singh Rana, Adv.  
Mr. Sanjay Kumar Tyagi, AOR**

**For Respondent(s)**

**Mr. Prakash Kr. Singh, Adv.  
Mr. Vishal Arun Mishra, Adv.  
Mr. Purushottam Sharma, Adv.  
Mr. Shivraj Singh, Adv.  
Ms. Purnima Jauhar, Adv.  
Mr. Pawan Kumar, Adv.**

**UPON hearing the counsel the Court made the following  
O R D E R**

**The principal argument of the petitioner is that the High Court has erroneously invoked Section 31-C of the U.P. Higher**

Education Service Commission Act, 1980 without noticing the fact that one of the requirements to attract that provision is that the post in the particular subject should have been created before the appointed date and never filled earlier. This factual position, however, was not canvassed before the High Court.

Realizing this position, learned counsel for the petitioner seeks to withdraw this Special Leave Petition with liberty to file review petition before the High Court to raise that contention specifically.

The Special Leave Petition is allowed to be withdrawn with liberty to the petitioner to challenge the decision in the review petition as well as the impugned judgment, if and when occasion arises.

(DEEPAK SINGH)  
COURT MASTER (SH)

(VIDYA NEGI)  
COURT MASTER (NSH)