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C.A.No. 7224-7225 OF 1999

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ITEM No.111

COURT No. 10

SECTION XI

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

Civil Appeal Nos.7224-7225 of 1999@@
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Committee of Mgmt. L.L.N. Degree College

Appellant

VERSUS

The Dir., Higher Edn. U.P., Allahabad & Ors.

Respondents

(With office report)

[Affidavit for Direction to take on record addl. documents filed
on behalf of respondents]

Date : 16/04/2003 These appeals were called on for hearing today

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)

Mr. Tripurari Ray,Adv.
Mr. Vishwajit Singh,Adv.
Mr. Ritesh Agrawal,Adv.

For Respondent(s)

Mr. Prashant Kumar,Adv. (N/P)

Dr. Sumant Bhardwaj,Adv.
Mr. Shashindra Tripathi,Adv.
Mr. Sarad Singhania,Adv.
Ms. Mridula Ray Bharadwaj,Adv.

Ms. Chitra Markandeya,Adv. (N/P)

UPON hearing counsel the Court made the following

O R D E R

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Heard learned counsel from the parties from 2.35 p.m.
to 3.45 p.m.

The civil appeals are disposed.

No costs.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal Nos.7224-7225 of 1999@@
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Committee of Mgmt. L.L.N. Degree College ...Appellant (s)

Versus~

The Director, Higher Education,
Uttar Pradesh, Allahabad & Ors.Respondent (s)

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Respondent Nos.4 to 6, who were appointed as part-time Lecturers in Lala Laxmi Narain Degree College, Sirsa, Allahabad, sought for payment of salaries at the rate at which the ad-hoc teachers were paid and also sought for regularisation of their services by filing Civil Miscellaneous Writ Petition No. 35210 of 1991 which came to be disposed of by a Division Bench of the High Court of judicature at Allahabad on 21st August, 1995 by directing the Director of Higher Education to dispose of the entire matter within two months from the date of the copy of the order. Pursuant to the said direction of the High Court, the Director, after consideration, rejected their claim. The said order of the ...2/-

Director was assailed in Civil Miscellaneous Writ Petition No. 27057 of 1996. While the said writ petition was pending before the High Court, the afore-mentioned respondents approached the State Government. The State Government, although was a party to both the writ petitions, passed an order on 8th September, 1997 to the effect that such part-time Lecturers be deemed to be appointed as ad-hoc teachers as they have been working even after April, 1990, and, therefore, their case for regularisation should be considered. The Committee of Management, that is the appellant in these appeals, filed Civil Miscellaneous Writ Petition No. 3357 of 1997 challenging the said order of the State Government. The High Court, by the impugned common judgement, disposed of both the writ petitions. Civil Miscellaneous Writ Petition No. 27057 of 1996 was allowed and Civil Miscellaneous Writ Petition (C) No. 3355 of 1997 was dismissed. Hence, these appeals.

The learned counsel for the appellants contended that the State Government was not at all fair and justified in passing the order dated 8th September, 1997 granting relief to Respondent Nos.4 to 6 when the very controversy was pending before the High Court in Civil Miscellaneous Writ Petition (C) No. 27057 of 1996. He added that even the said order was passed without giving notice and opportunity of hearing to the
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appellants. In that view, the said order of the State Government could not be sustained. It may be noted that in the said order dated 8th September, 1997, it is stated that the payment of salaries of these Lecturers should be made by the Management from their own sources. This is indicated to show that the said order of the State Government had an adverse affect on the appellants. Normally an order visiting the civil consequences cannot be passed without affording an opportunity of hearing to the party affected. In our view, on this short ground alone, Civil Miscellaneous Writ Petition No. 3357 of 1997 filed by the appellants should have been allowed and the order of the State Government dated 8th September, 1997 ought to have been set aside. If the High Court had considered the effect of this order, the consideration and approach in deciding Civil Miscellaneous Writ Petition No. 27057 of 1996 would have been different. The learned counsel for the appellants also submitted that the order passed by the Director, pursuant to the earlier order of the court, is perfectly valid. In opposition, the learned counsel appearing for Respondent Nos.4 to 6 strongly contended that there was no bar or any injunction against the State Government from passing the order dated 8th September, 1997. He reluctantly agreed that the said order was passed without hearing the appellants but he hastened to add that not giving an
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opportunity of hearing to the appellants before passing the said order did not prejudice their rights in any way. We find it difficult to agree with the submission of the learned counsel for Respondent Nos.4-6 in this regard. When the matter was pending before the High Court, ordinarily, the State Government being itself a party to the writ petition, should have presented its views before the High Court and waited for the orders. Even if it were to take an independent decision, it should have brought it to the notice of the High Court or sought permission of the High Court to proceed with the matter so that the High Court would have considered such request appropriately. Be that as it may, the order of the State Government dated 8th September, 1997 passed without affording an opportunity of hearing to the appellants, in our view, has prejudiced their rights. On this short ground alone, the order of the State Government dated 8th September, 1997 cannot be sustained. The High Court definitely committed an error in upholding such an order. In this view of the matter, Civil Miscellaneous Writ Petition No. 3357 of 1997 is entitled to succeed. We, therefore, set aside the impugned order of the High Court dismissing the said writ petition and in its place, allow the writ petition and quash the order of the State Government dated 8th September, 1997. So far as Civil Miscellaneous Writ Petition No. 27057 of 1996 is
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concerned, the High Court may have to examine it on its own merits in the absence of the order of the State Government dated 8th September, 1997. In this view of the matter, we remit Civil Miscellaneous Writ Petition No. 27057 of 1996 for hearing afresh in accordance with law.

If the State Government desires to pass a fresh order, it shall be open to it to pass appropriate orders but in the light of the observations made above.

The civil appeals are, accordingly, disposed of.

No costs.

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(Shivaraj V. Patil) @@
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(Arijit Pasayat)@@
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New Delhi,
April 16, 2003.