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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2532 of 2017

Mool Chand Netam S/o Late Shri Deoo Ram Netam, Aged About 65 Years R/o Village Devri, Post Dhansera, Tahsil Sarona, District Kanker Chhattisgarh., Chhattisgarh

--- Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Co-Operative Society, Mahanadi Mantralaya, Naya Raipur, Post Office And Police Station Rakhi, District Raipur Chhattisgarh., Chhattisgarh

2 - Registrar, Co-Operative Societies, Chhattisgarh, Block 3, Second And Third Floor, Indravati Bhawan, Naya Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

3 - Joint Registrar, Co-Operative Societies, Raipur Division Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

4 - Chhattisgarh State Co-Operative Tribunal Bilaspur, Through Its President, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

5 - Deputy Registrar, Co-Operative Societies, Mahasamund, Tehsil And District Mahasamund, Chhattisgarh., District : Mahasamund, Chhattisgarh

6 - Shri P. Tiwari, Senior Co-Operative Inspector, Mahasamund, Tahsil And District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

7 - Board Of Directors, Gramin Seva Sahakari Samiti Maryadit, Pendraavan, Reg. No. 1284, Sankara Jonk , Tehsil Pithora, District Mahasamund, Chhattisgarh., District : Mahasamund, Chhattisgarh

Respondent(s)

WPS No. 199 of 2023

Mool Chand Netam S/o Late Shri Deoo Ram Netam, Aged About 70 Years Retired Assistant Registrar Co-Operative Societies Mahasamund, R/o Village Devri, Post - Dhansera, Tehsil Sarona, District : Kanker, Chhattisgarh

---Petitioner

Versus

1 - State Of Chhattisgarh Through The Secretary, Department Of Co-Operative Society, Mahanadi Bhawan, Mantralaya, Naya Raipur, Post And Ps Rakhi, District Raipur Chhattisgarh.

2 - Registrar Co-Operative Societies, Chhattisgarh, Block-3, Second And Third Floor, Indrawati Bhawan, Naya Raipur, District : Raipur, Chhattisgarh

3 - Joint Registrar, Co-Operative Societies Raipur Division, District Raipur Chhattisgarh.

4 - Chhattisgarh State Co-Operative Tribunal, Bilaspur, Through Its President, District Bilaspur Chhattisgarh.

5 - Deputy Registrar Co-Operative Societies, Mahasamund, Tehsil And District Mahasamund Chhattisgarh.

Respondent(s)

For Petitioner(s)	:	Mr. Vivek Agrawal, Advocate
For Respondent(s)	:	Mr. Sajal Kumar Gupta and Ms. Deepeshwari Mahilwar, PL

Hon'ble Shri Justice Sachin Singh Rajput

CAV Order

- These two writ petitions are connected to each other and they are being heard and decided by this common order.
- WPS No. 2532/2017 has been filed seeking for the following reliefs.

"i. That, this Hon'ble Court may kindly be pleased to quash and set aside the impugned recovery order dated 10.03.2016 along with review order dated 20.04.2017 passed by the respondent No.4, Chhattisgarh State Co-operative Tribunal, Bilaspur (Annexure-P/1).

ii. That, this Hon'ble Court may kindly be pleased to quash and set-aside the impugned recovery notices dated

23/05/2016 and 06/06/2016 passed by respondent no.2 & 5 (Annexure-P/3).

iii. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner in the interest of justice."

3. Facts of the case in WPS No. 2532/2017 is that the petitioner was appointed in the respondent department and rendered service to the best of his ability and sincerity. He retired from the post of Assistant Registrar on 30.06.2012 upon attaining the age of superannuation. The dispute relates to the alleged excess payment of transportation charges during the period 2008-09 to 2011-12 at the relevant time, the petitioner was posted as In-charge Deputy Registrar, Cooperative Societies, Mahasamund which according to the respondents resulted in a financial loss of Rs.15,96,889/- to the cooperative society. The transportation charges were revised on the basis of applications received from transporters and recommendations made by the concerned cooperative authorities particularly in view of the price increases in diesel and labour charges. It is the further case of the petitioner that he has not made any irregularity to increase the transportation charges and he has taken decision according to the circumstances at that relevant time and society has also not suffered any financial loss due to the said decision. Thereafter, a recovery proceeding has started after his retirement. The proceedings against the concerned Society resulted in an order dated 03.03.2014 under Section 53 of the Chhattisgarh Cooperative Societies Act, 1960 which was affirmed in appeal on 29.04.2014. Thereafter, the matter reached the Chhattisgarh State Cooperative Tribunal (for short 'learned cooperative Tribunal). According to the petitioner, although he was

neither impleaded as a necessary party nor afforded any opportunity of hearing, the consequential recovery was directed against him. The petitioner was thereafter, nearly four years after his retirement, served with the recovery order dated 10.03.2016 followed by notices dated 23.05.2016 and 06.06.2016 seeking recovery of the aforesaid amount of Rs.15,96,889/-. The petitioner contends that no opportunity of hearing was afforded to him before fastening the liability upon him. He further relies upon information obtained under the Right to Information Act, 2005, according to which the transportation charges actually paid by the Society were within the permissible limits and the Society had not suffered the alleged financial loss. Further case of the petitioner is that a departmental enquiry concerning the alleged financial loss had already been initiated against him in the year 2012 in which charges were framed and reply was submitted; however, the enquiry has not been concluded till date and his retiral dues have also remained withheld. He further relies upon the decision of this Court in **CG State Cooperative Marketing Federation Ltd. v. Gireeja Prasad Mishra**, wherein it was held that in the absence of a specific statutory provision, departmental proceedings cannot be continued against an employee after his retirement. Thus, the petitioner assails the recovery order dated 10.03.2016, review order dated 20.04.2017 and consequential notices dated 23.05.2016 and 06.06.2016, primarily on the grounds that the same were issued after his retirement, without impleading him and affording him opportunity of hearing and in violation of the principles of natural justice. Therefore, he seeks quashing of the aforesaid orders and consequential relief.

4. Whereas WPS No. 199/2023 has been filed seeking for the following reliefs.

i. 10.1 That this Hon'ble Court may kindly be pleased to call for the entire records.

10.2 This Hon'ble Court may kindly be pleased to direct the respondents to decide the representation of the petitioner and to pay all the pending retrial dues of the petitioner.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief to the petitioner, as it may deem fit.

10.4 Cost of the petition.

5. Facts of the WPS No. 199/2023 in a nutshell is that the petitioner was serving as Assistant Registrar, Cooperative Societies, Mahasamund, and retired from service on 30.06.2012 upon attaining the age of superannuation. After his retirement, the petitioner was served with an order dated 10.03.2016 whereby recovery was sought to be effected against him, followed by recovery notices dated 23.05.2016 and 06.06.2016 without affording him any opportunity of hearing. Aggrieved thereby, the petitioner approached this Court in W.P.(S) No. 5307/2016 which was disposed of on 07.11.2016 permitting him to prefer a review petition before the competent authority and directing that the same be decided expeditiously on merits. Pursuant thereto, the petitioner preferred a review petition, which came to be dismissed. Consequently, he approached this Court by filing W.P.(S) No. 2532/2017 wherein by order dated 19.06.2017, this Court granted interim protection and directed that no recovery be effected from the petitioner pursuant to the impugned order till the next date of hearing. The alleged liability against the petitioner pertains to the transportation charges allowed by him while functioning as In-charge Deputy

Registrar during the years 2008-09 to 2011-12. It is further case of the petitioner that such charges were allowed on the basis of recommendations dated 08.10.2008, 09.08.2009, 02.08.2010 and 06.06.2011 made by the concerned authorities. The petitioner received his GPF amount of Rs.8,87,699/- from the Office of the Accountant General, Raipur, on 27.08.2012. However, despite repeated representations, his other retiral dues, including gratuity, leave encashment and group insurance have not been released. Thus, except for the GPF amount, the remaining retiral benefits of the petitioner have remained unpaid for more than ten years after his retirement. Therefore, the petitioner assails the action of the respondents in withholding his retiral dues and seeks appropriate directions for release of all outstanding retiral benefits in accordance with law.

6. Making submission in WPS No. 2532/2017 learned counsel for the petitioner submits that at the relevant point of time, the petitioner was working as Deputy Registrar, Co-operative Societies under the respondent-State and retired from service on 30.06.2012 upon attaining the age of superannuation. A notice dated 15.01.2014 (Annexure P/4) was issued by respondent No. 5 to respondent No. 7 *inter alia* stating that in respect of the lead work carried out by respondent No. 7 during the years 2008-09 to 2011-12, an excess amount had been paid on account of enhancement of the transportation rate sanctioned by the Government Committee, resulting in a monetary loss of Rs. 15,96,889/- to the Government exchequer. A direction was accordingly issued to take appropriate steps for recovery of the said amount. Thereafter, respondent No. 7

was dissolved for a period of six months and respondent No. 6 was appointed as Administrator by exercising the powers under Section 53(1) of the Co-operative Societies Act, 1961. The said order was challenged by respondent No. 7 and vide order dated 05.03.2014, the competent authority dealt with the matter. The said order was thereafter challenged by respondent No. 7 before respondent No. 3 by filing an appeal under Section 78(1) of the Act of 1960. The said appeal was dismissed by respondent No. 3 vide order dated 29.04.2014. Aggrieved by the aforesaid order, respondent No. 7 preferred an appeal before respondent No. 4 which was registered as Appeal No. 707/2015. Vide order dated 10.03.2016 (Annexure P/1), the appeal preferred by respondent No. 7 was dismissed and the order dated 29.04.2014 passed by respondent No. 3 was affirmed. However, while deciding the said appeal, the learned Cooperative Tribunal in paragraph 4 of its order, observed that, in respect of the loss of Rs. 15,96,889/- caused to the Government exchequer during the period from 2008-09 to 2011-12, legal proceedings should be initiated/appropriate action should be taken against the then Deputy Registrar, Co-operative Societies and that the monetary loss be recovered from the concerned officer. The learned cooperative Tribunal further observed that departmental proceedings ought to be initiated against the petitioner. He submits that by the time the aforesaid order dated 10.03.2016 was passed, the petitioner had already retired from service on 30.06.2012. Despite this, a finding adverse to the petitioner, having civil consequences, was recorded by the learned Tribunal without impleading him as a party to the proceedings and, more importantly, without affording him any opportunity of hearing or

representation. He further submits that no finding of guilt or liability having civil consequences could have been recorded against the petitioner without providing him an opportunity to explain his position. The principles of natural justice, particularly the rule of *audi alteram partem*, required that the petitioner be given an opportunity of hearing before any such adverse finding was recorded against him which has not been followed. Upon coming to know of the aforesaid observations and findings, the petitioner preferred an application for review before the learned Tribunal, however, vide order dated 20.04.2017, the review application preferred by the petitioner was dismissed. Thereafter, in compliance with the order dated 10.03.2016 (Annexure P/1), respondent No. 2 issued an order dated 23.05.2016 (Annexure P/3), directing recovery of an amount of Rs. 15,96,889/- from the petitioner towards the alleged loss caused on account of excess payment made to respondent No. 7 over and above the transportation rate sanctioned by the Government Committee in respect of the lead work undertaken by respondent No. 7 during the years 2008-09 to 2011-12. He further submits that the petitioner had retired from service on 30.06.2012, whereas the impugned order directing recovery was passed only on 23.05.2016, i.e. nearly four years after his retirement. It is, therefore, contended that the recovery sought to be effected from the petitioner after his retirement, particularly in the absence of any valid departmental proceeding or determination of liability in accordance with law, is wholly unsustainable. He goes to submit that the order dated 10.03.2016, insofar as it records an adverse finding against the petitioner and directs initiation of departmental proceedings/recovery against him, was passed without affording him any opportunity of

hearing. Therefore, the said finding having been rendered in violation of the principles of natural justice, cannot be sustained in eyes of law. The consequential order dated 23.05.2016 (Annexure P/3), being founded upon the aforesaid order, is also liable to be set aside.

7. Further in **W.P.S. No. 199/2016** learned counsel for the petitioner submits that the petitioner has challenged the very same order dated 23.05.2016 passed by respondent No. 2, which has also been challenged in W.P.S. No. 2532/2017. In addition thereto, the petitioner has sought a direction for payment of all his pending retiral dues. He submits that the grounds and submissions advanced on behalf of the petitioner in W.P.S. No. 2532/2017 are equally applicable to the present writ petition. Accordingly, the submissions made in the earlier writ petition are adopted and reiterated in the present proceedings. It is, therefore, contended that the impugned order dated 23.05.2016 is liable to be quashed and the respondents may further be directed to release all the retiral dues lawfully payable to the petitioner.
8. Per contra, learned counsel appearing for the respondents/State opposed the submissions advanced on behalf of the petitioner and submitted that after issuance of show-cause notice, the Board of Directors of respondent No. 7 was superseded by exercising powers under Section 53 of the Act of 1960 vide order dated 03.03.2014. The appeal preferred against the said order was dismissed by the Joint Registrar, respondent No. 3 and the second appeal preferred before the respondent No. 4 also came to be rejected. She further submits that an admitted loss of Rs. 15,96,889/- was caused to the Government Exchequer on account of the orders passed by the petitioner permitting payment of transportation charges in excess of

the rates fixed by the Government Committee for the lead work executed by respondent No. 7 during the years 2008-09 to 2011-12. It is contended that since the petitioner was responsible for the said financial loss, no interference is warranted in the present writ petitions and the same deserve to be dismissed.

9. I have heard learned counsel for the parties and perused the material available on record.
10. In W.P.(S) No. 2532 of 2017 the petitioner has called in question the orders dated 10.03.2016 and 20.04.2017 passed by respondent No.4 Annexure P/1. The petitioner has also challenged the consequential notices dated 23.05.2016 and 06.06.2016 issued by respondent Nos. **2 and 5** pursuant to the order dated 10.03.2016.
11. The principal submission of learned counsel for the petitioner is that respondent No.4 without affording any opportunity of hearing to the petitioner, recorded adverse strictures against the concerned officer and observed that on account of an alleged illegal payment made by the then Deputy Registrar, Cooperative Societies, a loss of Rs.15,96,899/- had been caused to the Government exchequer. Respondent No.4 further directed that the said amount be recovered from the concerned officer and also directed initiation of departmental proceedings. It is pursuant to the aforesaid direction that the impugned notices came to be issued to the petitioner. A perusal of the record would show that the observations were made by respondent No.4 while deciding an appeal preferred by **respondent No.7**. The impugned notices were issued as a consequence of the observations and directions contained in the said order. Aggrieved thereby, the

petitioner preferred a review petition before respondent No.4, which also came to be dismissed.

12.The crux of the grievance of the petitioner is that adverse strictures having civil consequences were recorded against him without affording him any opportunity of hearing. It is not in dispute that the petitioner had already superannuated from service on 30.06.2012 whereas the recovery proceeding has started approximately after four years of his retirement. The proceedings before the Cooperative Tribunal and the order containing the adverse observations were also passed long after the superannuation of the petitioner.

13. From the material placed on record, it is evident that before recording the adverse observations and issuing directions which had the effect of fastening financial liability upon the petitioner, no notice or opportunity of hearing was afforded to him. Even the subsequent review petition preferred by the petitioner came to be dismissed. The effect of the order dated 10.03.2016 was not merely declaratory or academic. The observations recorded therein constituted the foundation for the subsequent issuance of notices to the petitioner and for initiation of proceedings having adverse civil consequences. The petitioner was, therefore, entitled to an opportunity to explain his position before such observations were made against him.

14.It is a settled principle of law that no person against whom adverse strictures or observations carrying civil consequences are proposed to be made ought to be condemned unheard. The principles of natural justice, particularly the rule of *audi alteram partem* require that a person likely to be adversely affected by such observations must be

afforded a reasonable opportunity to place his case before the authority concerned.

15. It is possible that, at the stage of adjudication of the appeal, respondent No.4 may not have been aware about the officers who could ultimately be affected by the observations made in the order. However, once the authority proposed to record adverse findings or observations against a particular officer and particularly when such observations were capable of resulting in recovery of a substantial amount from him, the elementary requirement of fairness demanded that notice be issued to the concerned officer before such observations were recorded.

16. The requirement of observance of natural justice is not dependent upon the nomenclature of the proceedings. The question is whether the order or observation has the potential to visit a person with civil consequences, if it does, the affected person ordinarily cannot be deprived of an opportunity of hearing unless such opportunity is expressly excluded by law or its exclusion is otherwise legally sustainable. In this regard, this Court is fortified by the principles laid down by the Hon'ble Supreme Court in ***K, A Judicial Officer*** reported in **AIR 2001 SC 972**, in which it has been held in paragraphs 16 to 18 as under;

16. The remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely reconstitute and restore the harmed judge from the loss of dignity and honour suffered by him. In 'JUDGES' by David Pannick (Oxford University Press Publication, 1987) a wholesome practice finds a mention suggesting an appropriate course to be followed in such situations:

"Lord Hailsham explained that in a number of cases, although I seldom told the complainant that I had done so, I showed the complaint to the judge concerned. I thought it good for him both to see what was being said about him from the other side of the court, and how perhaps a lapse of manners or a momentary impatience could undermine confidence in his decision."

17. Though the learned author observes that such a private discussion, uncommunicated to the complainant, would be unlikely to remove his sense of grievance, the resolution is to be found in the same book elsewhere in the following passage (though in a different context) :-

"Lord bridge gave a similar explanation in 1984: 'If one Judge in a thousand acts dishonestly within his jurisdiction to the detriment of a party before him, it is less harmful to the health of society to leave that party without a remedy than that nine hundred and ninety-nine honest judges should be harassed by vexatious litigation alleging (SIC) in the exercise of their proper jurisdiction'."

18. Reverting back to the case at hand, may be that the learned Metropolitan Magistrate in initiating contempt proceedings and taking cognizance of substantive offences under the Indian Penal Code against the officials of Public Works Department was not properly advised or was at the worst indulging into a misadventure and therefore to the extent of quashing of the proceedings by the High Court we may not find fault and certainly no one has come up to this Court complaining against the merits of that part of the order of the High Court by which criminal proceedings have been quashed. Nevertheless, the ill advised move or misadventure of the learned Metropolitan Magistrate was neither a misconduct nor an outcome of malice. Though she acted in a way which did not meet the approval of the High Court, the facts and the circumstances of the case point out that her only desire was to make her court room functional. Probably she felt aggrieved, rather agitated, by the apathy of the Public Works Department people who were taking the things too easy unmindful of the practical difficulties faced by the presiding judge occupying the court room and discharging judicial functions. The fact remains that the observations were made by the High Court without affording the Metropolitan Magistrate an opportunity of

explaining or defending herself. The remarks were not necessary for the decision of the case by the High Court as an integral part thereof. Animadverting on the conduct of the learned Metropolitan Magistrate was not a necessity for the exercise by the High Court of inherent power or the power of superintendence to quash the proceedings initiated by the learned Metropolitan Magistrate. Expunging of the remarks, as we propose to do, will not affect the reasons for the judgment of the High Court. On the other hand, the remarks have a potential to prejudice the career of the appellant.”

17. Likewise, in ***S.K. Viswambaran v. E. Koyakunju***, reported in **AIR 1987 SC 1436**, wherein the Hon'ble Supreme Court held that even where the conduct of a person may require scrutiny and may merit adverse comment, the principles of natural justice require that such person must be issued notice and afforded an opportunity of hearing before any adverse remarks are made against him. The Hon'ble Supreme Court observed that failure to do so would amount to denial of elementary justice.
18. A similar view has been expressed by the Hon'ble Supreme Court in ***Manish Dixit v. State of Rajasthan***, (2001) 1 SCC 596, and ***Amarpal Singh v. State of Uttar Pradesh***, (2012) 6 SCC 491. The consistent thread running through these decisions is that adverse observations or strictures, particularly those having the potential to cause civil consequences or prejudice the reputation, service rights or financial interests of a person, ought not to be recorded without affording such person a reasonable opportunity of being heard.
19. Applying the aforesaid principles to the facts of the present case, this Court is of the considered view that respondent No.4 fell in error in

recording adverse strictures against the petitioner and in issuing consequential directions without affording him an opportunity of hearing. The subsequent filing of a review petition by the petitioner does not cure the initial violation of the principles of natural justice. The right to an opportunity of hearing is required to be afforded at the stage when the adverse observations are proposed to be recorded, particularly when such observations form the basis for subsequent proceedings against the person concerned.

20. Consequently, the adverse observations/strictures recorded against the petitioner in the order dated 10.03.2016, to the extent they relate to the petitioner, cannot be sustained in law and are liable to be set aside.

21. Accordingly, the order dated 10.03.2016 (Annexure P/1) is hereby set aside. The remaining part of the said order shall remain undisturbed.

22. So far as the petitioner's challenge to the notice dated 23.05.2016 is concerned, the same is merely a notice issued in consequence of the proceedings. Having regard to the passage of time and the subsequent developments, this Court is not inclined to interfere with the said notice at this stage.

23. W.P.(S) No.2532 of 2017 is accordingly disposed of in the aforesaid terms.

24. **In W.P.(S) No.199 of 2023**, the petitioner has primarily sought a direction to the respondents to consider and decide his representation and to release the retiral dues allegedly remaining payable to him.

25. A return has been filed by the State. From the return, it appears that the petitioner has already been paid his retiral dues under various

heads including GID, FBF and GPF. However, insofar as the pension payable to the petitioner is concerned, the respondents have stated that a departmental enquiry was pending against him at the time of his retirement.

26. Annexure R/3 dated 24.09.2018 appended to the return indicates that the departmental enquiry was subsequently concluded and a final order was passed. By the said order, recovery of an amount of Rs.15,96,899/- was directed to be made from the pension of the petitioner @20% per month until recovery of the said amount, purportedly in exercise of the power under Rule 9 of the Chhattisgarh Civil Services (Pension) Rules, 1976.

27. However, there is a significant aspect which cannot be overlooked. The aforesaid order dated 24.09.2018 produced by the respondents as Annexure R/3 has not been specifically challenged by the petitioner in the present writ petition.

28. Once an order imposing recovery from pension has attained existence and the same has not been assailed before this Court, this Court cannot, in the absence of a challenge to such order, issue a blanket direction to the respondents to release the petitioner's entire pension or all pensionary benefits contrary to the effect of the said order. The relief sought by the petitioner for payment of the entire retiral dues, therefore, cannot be granted in the present proceedings. The petitioner would first be required to challenge the order dated 24.09.2018 (Annexure R/3), if the same has not already been assailed before an appropriate forum and establish his entitlement to the relief claimed in accordance with law.

29. So far as the prayer for consideration of the representation of the petitioner is concerned, the petitioner shall be at liberty to submit a fresh representation to respondent No.1 setting out his grievances and the reliefs sought by him. In the event such representation is submitted respondent No.1 shall consider and decide the same, strictly in accordance with law by passing a reasoned and speaking order, as expeditiously as possible and preferably within a period of **120 days** from the date of receipt of the representation along with a copy of this order. The petitioner is also be at liberty to avail such legal remedy available to him in accordance with law against the order dated 24.09.2018 (Annexure R/3), if such remedy has not already been availed.

30. It is made clear that this Court has not expressed any opinion on the merits of the order dated 24.09.2018 or on the entitlement of the petitioner to pensionary benefits. All such questions are left open to be considered in appropriate proceedings, if instituted by the petitioner.

31. The submission advanced on behalf of the respondents on the basis of the judgments relied upon by them does not assist the respondents on the facts of the present case. The decisions cited by the respondents proceed on their own facts and are distinguishable from the controversy involved herein, particularly having regard to the undisputed fact that the adverse observations against the petitioner were recorded without affording him an opportunity of hearing and that the consequential order dated 24.09.2018 has not been specifically challenged in the present writ petition.

32.Accordingly, W.P.(S) No.199 of 2023 is disposed of with the aforesaid liberty and directions.

33.There shall be no order as to costs.

Sd/-

(Sachin Singh Rajput)

Judge

H.Ansari

HIFZURRAHMAN
ANSARI

Digitally signed
by
HIFZURRAHMAN
ANSARI
Date: 2026.08.24
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