

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.667 of 2014

In

Civil Writ Jurisdiction Case No. 20090 of 2010

- =====
1. The State of Bihar
 2. The Home Secretary, Govt. of Bihar, Old Secretariat, Patna
 3. The Director General of Police, Bihar, Patna
 4. The Joint Secretary, Home (Police) Department, Govt. of Bihar, Old Secretariat, Patna
 5. The Deputy Secretary, Home (Police) Department, Govt. of Bihar, Old Secretariat, Patna

Appellants

Versus

Prantosh Kumar Das, Son of Late Nakul Chandra Das, Resident of Uma Chandra Lane Kharman Chak, Police Station- Kotwali, District- Buhagapur, at present posted as Sub-Divisional Police Officer, Kishanganj, District- Kishanganj

Respondent

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Appearance :

For the Appellants : Mr. Rabindra Kumar Priyadarshi, AC to PAAG
Mr. Ranjeet Kumar, Advocate
For the Respondent : M/s. Sachindra Kumar Tiwari, Ajay Kumar Sinha,
Subhash Chandra Jha

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CORAM: HONOURABLE MR. JUSTICE I.A. ANSARI
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE SAMARENDRA PRATAP SINGH)

Dated 19-01-2015

The State of Bihar has preferred this appeal against the order, dated 12.8.2013, passed in C.W.J.C. No. 2009 of 2010, whereby a learned Single Judge of this Court has allowed the writ application of the writ petitioner for promotion to the post of Senior Deputy



Superintendent of Police with effect from 01.11.2000, i.e., the date on which his juniors were promoted, instead of 03.03.2010, and also for promotion to the post of Additional Superintendent of Police with effect from 31.12.2010 instead of 03.03.2011, i.e., the date on which his juniors were granted further promotions. The writ application was allowed, primarily, on the premises that the writ petitioner did not suffer from any disability on 01.11.2000 or on 31.12.2010, the dates on which his juniors were granted promotions to the post of Senior Deputy Superintendent of Police and, thereafter, to the rank of Additional Superintendent of Police.

2. The writ petitioner, who is sole respondent in this case, initially, filed writ application, bearing C.W.J.C. No.20090 of 2010, for quashing a part of the Memo No. 5447, dated 05.07.2010, issued under the signature of Deputy Secretary, Home Police, whereby he had been promoted to the post of Senior Deputy Superintendent of Police, with effect from 03.03.2010, instead of 01.11.2000, with all consequential benefits.

3. The facts of the case are not much in dispute. The writ petitioner was appointed as Deputy Superintendent of Police in the year 1990 and was posted as Sub-Divisional Police Officer, at Biroul, Darbhanga. On



09.03.2000, Biroul Police Station Case No. 31 of 2000 was instituted under Section 376 of Indian Penal Code against one Lalo Choudhary. After investigation of the case, one Nand Kishore Singh, the Investigating Officer, claiming to have found the case against the accused false, submitted *final form*. Before submitting *final form*, even the informant, Hira Devi, was subjected to medical examination. The petitioner, in his supervisory notes, affirmed the findings of the Investigating Officer and forwarded the report to the Superintendent of Police, Darbhanga, for his consideration. The Superintendent of Police, Darbhanga, too, on consideration of the materials on record, came to the conclusion that the case was false and, accordingly, by order, dated 20.04.2000, directed submission of *final form* in favour of the accused. As directed, the Investigating Officer submitted *final form* vide his report, dated 28.04.2000. Later on, the new incumbent to the office of the Superintendent of Police, Darbhanga, on the direction of the higher authorities, reopened the case and found the case true under Sections 242, 448, 354 of the Indian Penal Code read with Sections 3(i)(iii)(x)(xi) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. *Charge sheet* having been submitted,

charges were framed, giving rise to Trial No. 46 of 2008, which ultimately ended in the acquittal of the accused.

5. During the pendency of the trial, the disciplinary authority, on the administrative side, served *charge sheet*, on 15.06.2007, on the petitioner, alleging that the petitioner had illegally supervised Biroul Police Station Case No. 31 of 2000 as false. The petitioner submitted his show cause reply on 18.09.2007. Not being satisfied with the show cause reply of the writ petitioner, the Home Police Department initiated a departmental proceeding against the petitioner. In the departmental proceeding, the petitioner, again, denied the charges and stood his ground that the supervision did not suffer from any illegality. In his written statement, the petitioner stated that opinion, tendered in course of supervision of a case, cannot constitute *misconduct* unless motive is attached to such a report. In this case, we are not concerned with validity of charges or otherwise or even with the findings, later on, recorded in the departmental proceedings.

6. In the year 2008, Departmental Promotion Committee was constituted to consider the promotion of Deputy Superintendent of Police to the next higher post of Senior Deputy Superintendent of Police. However, as the



departmental proceeding was pending against the petitioner, he was not considered for promotion nor his case was kept under '*sealed cover*'. Some junior Deputy Superintendent of Police were promoted, vide notification, dated 08.08.2008 (Anexure-13 to the writ petition), with effect from the due date, i.e., 01.11.2000, whereas the petitioner-appellant was left out of consideration. The petitioner was held guilty, in the departmental proceeding, on 02.03.2009 and penalty of *censure* and *withholding of one increment, with non-cumulative effect*, was awarded. An appeal, preferred by the writ petitioner, was also rejected on 02.12.2009. Being aggrieved, the petitioner filed writ petition in this Court, which gave rise to C.W.J.C. No. 9157 of 2010.

7. In the meanwhile, on 05.07.2010 (Annexure-12 to writ petition), the petitioner was promoted to the post of Senior Deputy Superintendent of Police with effect from 03.03.2010. On 31.12.2010 (Anexure-14), the said juniors to the petitioner were promoted to the post of Additional Superintendent of Police with effect from the same date. On 31.03.2011, the petitioner was promoted to the post of Additional Superintendent of Police with effect from 03.03.2011, which was challenged vide I.A. No. 3729 of 2013. According to the petitioner, he ought to

have been promoted to the post of Additional Superintendent of Police with effect from 31.12.2010. The amendments, so sought for, were allowed on 18.06.2013, when petitioner's juniors were promoted.

8. In the meantime, C.W.J.C. No.9157 of 2010, which was filed against order of punishment, came up for hearing and was allowed by order, dated 14.10.2011. By the order, dated 14.10.2011, aforementioned, the punishment awarded to the petitioner was set aside and the matter was remitted to the disciplinary authority to consider the matter afresh from the stage of submission of reply of the petitioner to the second show cause notice. In terms of the order, dated 14.10.2011, passed in C.W.J.C. No.9157 of 2010, the petitioner was issued second show cause to which he replied. The Department, on consideration of materials on record, vide order, dated 22.02.2013, reiterated the penalty of *censure* and withholding of one increment without cumulative effect passed earlier on 2.3.2009.

9. In course of time, the writ petition, i.e., C.W.J.C. No. 20090 of 2010, from which this appeal arises, came up for consideration on 12.8.2013. The learned Single Judge upheld the contention of the writ petitioner that he was entitled to promotion to the post of



Deputy Superintendent of Police with effect from 01.11.2000, i.e., the date on which his juniors were promoted, and to the post of Additional Superintendent of Police with effect from 31.12.2010, i.e., the date on which his juniors were granted promotions. While coming to the aforesaid conclusion, the learned Single Judge was of the view that punishment of *censure* and withholding of one increment with non-cumulative effect, awarded to the petitioner, vide order, dated 02.03.2009, are both minor punishments, the effect of which would last only for a year.

(underlining is ours for emphasis)

10. According to the learned single Judge, punishments, which were minor in nature, having been awarded on 2.3.2009, the adverse effect thereof lasted only for a year, that is, up to 02.03.2010. The learned single Judge observed that the petitioner did not suffer from any disability in the year 2000, because no proceeding was pending against him at that point of time, and his case ought to have been considered for promotion to the post of Senior Deputy Superintendent of Police. Further-more, noted the learned single Judge, no Departmental Promotion Committee sat till 08.08.2008, though promotion became due in November, 2000, and



had the Departmental Promotion Committee been held promptly or even before 2007, the petitioner would have got his promotion as there was no disability against him inasmuch as the departmental proceeding was started against the petitioner in the year 2007 only. The learned Single Judge took the view that the petitioner should not suffer on account of fault on the part of the respondents in holding meeting of Departmental Promotion Committee in time. The learned Single Judge accordingly held that the writ petitioner ought to be promoted to the post of Senior Deputy Superintendent of Police with effect from 01.11.2000, i.e., the date on which his juniors were promoted. In view of the same logic, as noticed hereinbefore, the learned Single Judge directed that the petitioner would be deemed to have been promoted to the post of Additional Superintendent of Police with effect from 31.12.2010, i.e., the date on which his juniors were promoted to the said post. In a nut shell, according to the learned single Judge, the petitioner suffered disability only from 02.03.2009 to 02.03.2010 as punishments were minor and from 15.06.2007 to 02.03.2009, when the departmental proceedings were pending.

11. The appellants assail the order of the learned single Judge, primarily, on the following grounds:



(i) The incident relates to the year 2000, when the writ petitioner submitted his supervision note, affirming the findings of the Investigating Officer that no case, under Section 376 of the Indian Penal Code, is made out against the accused, Lalo Choudhary;

(ii) In view of the Explanation 2(i) added to Rule 14 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, by Bihar Government Servants (Classification, Control and Appeal) (Third Amendment) Rules, 2010, the effect of *censure* would be for three years and not one year as observed by the learned Single Judge. As per the Explanation, the adverse effect of *censure*, on confirmation and promotion of Government servant, would remain in force for next three consecutive years and would relate back to the year and date of omission and commission of occurrence/incident;

(iii) The *censure* awarded was for the act of omission and commission committed in the year 1999-2000 and its adverse effect would last till 2002-03 and, as such, the petitioner was not entitled to be considered for consideration for promotion till 03.03.2003;

(iv) The writ petitioner could have, therefore, been considered for promotion to the post of Senior Deputy Superintendent of Police with effect from

03.03.2003 instead of 01.11.2000 inasmuch as the petitioner could not have been considered for promotion during the period, when the penalty of *censure* was operative against him;

(v) Further-more, as the punishment of *withholding of increment for one year*, dated 02.03.2009, lost its effect on 30.06.2011, the petitioner was considered for promotion to the post of Additional Superintendent of Police with effect from 03.03.2011 and not from 31.12.2010;

(vi) In the appeal, the appellant-State has, now, taken a new stand that the writ petitioner-respondent cannot be considered for promotion till 31.06.2014. In support of his submissions, the appellants contended that the punishment, dated 02.03.2009, was set aside by the High Court on 14.10.2011, the matter was remanded for fresh consideration and, on remand, the same punishment has been reiterated, vide order, dated 12.05.2013. The punishment of *withholding of one year increment*, thus, would expire on 31.06.2014 and, hence, the writ petitioner-respondent would, now, be entitled to promotion not prior to 31.06.2014.

12. We have heard counsel for the parties and have perused the relevant materials on record.



13. The stand of the appellants and the respondent are diametrically opposite. As per the appellants, the adverse entry, of *censure* would relate back to the date of incident or the act of omission or commission and would accordingly be entered in the character roll of that year; and the adverse effect of penalty would consequently operate from that year and not from the date of punishment. The case of the writ petitioner/respondent, on the other hand, is that it would apply prospectively from the date of award of punishment i.e. 02.03.2009.

14. The undisputed facts, which unfold from the pleadings, are in brief as follows:

(a) The alleged act of omission and commission is of the year 2000;

(b) The departmental proceeding was commenced in the year 2007;

(c) The order of punishment was passed on 02.03.2009;

(d) Two punishments were inflicted, namely, punishment of *censure* and *stoppage of one increment without cumulative effect*;

(e) The juniors to the writ petitioner were granted promotion vide notification, dated

08.08.2008, with effect from 01.11.2000, to the post of Senior Deputy Superintendent of Police from the post of Deputy Superintendent of Police;

(f) The writ petitioner-respondent, who was, admittedly, senior was granted promotion under notification, dated 05.07.2010, to the post of Senior Deputy Superintendent of Police with effect from 03.03.2010;

(g) The juniors to the writ petitioner were granted further promotion to the post of Additional Superintendent of Police vide order, dated 31.12.2010, with effect from the same date; whereas the writ petitioner-respondent was granted promotion to the said post with effect from 03.03.2011, vide order, dated 31.03.2011;

(h) The writ petitioner-respondent filed C.W.J.C. No. 20090 of 2010. The learned single Judge allowed promotions to the writ petitioner to the post of Senior Deputy Superintendent of Police and Additional Superintendent of Police from the dates his juniors were granted promotions, that is, with effect from 01.11.2000

and with effect from 31.12.2010 respectively;

15. The learned single Judge noticed that the departmental proceeding was started in the year 2007, when charges were framed, and the punishment was awarded in the year 2009. The learned single Judge, then, took the view that the petitioner had not been suffering from any disability till at least the year 2007 and, as such, he was entitled to promotion with effect from 01.11.2000, when his juniors received promotion. The learned single Judge observed that had promotional issue been considered before the year 2007, that is, prior to initiation of the departmental proceeding, the writ petitioner would have got promotion as he did not suffer any disability. Further-more, because of the delay on the part of the appellants in convening the Departmental Promotion Committee, the writ petitioner should not suffer. In support of his views, the learned single Judge has relied upon judgment of Chief Justice Chagla, in the case of **All India Groundnut Syndicate limited v. Commissioner of Income Tax, Bombay City, (AIR 1954 Bombay 232)**, and the relevant portion, upon which the learned single Judge relied upon, are reproduced below:

"But the most surprising contention is put forward by the

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Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S.24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person- we take it that the Income-tax Department is included in that definition- can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default".

16. The learned single Judge has also relied upon the judgment in the case of **Mangalore Chemicals and Fertilizers Limited v. Deputy Commissioner of Commercial Taxes and Others**, reported in **1992 Supp (1) SCC 21**. The relevant observations, relied upon by the learned single Judge, read as under:

"22.What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "with grant". There is no dispute that appellant had satisfied



these conditions,. Yet the permission was withheld not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told, "We are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning; "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality".

17. The learned single Judge in view of the *ratio* laid down, in **All India Groundnut Syndicate limited** (supra) and **Mangalore Chemicals and Fertilizers Limited** (supra), held that the State cannot take advantage of its own delay in holding Department Promotion Committee and the delay cannot extinguish the right of a person to be considered for promotion. The learned single Judge has observed that if the Departmental Promotion Committee had been constituted in the year 2003, the writ petitioner would have been entitled to be promoted with effect from 01.11.2000 and the subsequent punishment in the year 2009 would not have deferred him of the promotion.



18. Similarly, according to learned single Judge, the punishment of *censure* and *withholding of one increment without cumulative effect*, awarded to the writ petitioner in the year 2009, had lapsed and became ineffective after a period of one year, i.e., with effect from 02.03.2010. Further-more, the juniors to the writ petitioner were further promoted to the post of Additional Superintendent of Police and, as such, the writ petitioner would be entitled to promotion to the post of Additional Superintendent of Police with effect from 31.12.2010, the date on which his juniors were promoted as the writ petitioner-respondent did not suffer from any disability at that point of time.

19. There cannot be any quarrel with respect to the broad propositions of law as noted by the learned single Judge. What is, however, important is that the circumstances are different in the present case, because of specific Executive Instructions, contained in 1982 Resolution, on the issue, having been issued by the Government to which we would advert to, later on, in this order.

20. As noticed above, the issue before this Court is: whether the punishment of *censure* would operate prospectively as held by the learned Single Judge



or would relate back to the period of omission and commission of occurrence. The State, in support of its stand that the punishment of *censure* would operate retrospectively and would relate back to the year of occurrence, has placed reliance on Explanation 2(i) to Rule 14 of the Bihar Government Servants (Classification, Control & appeal) (Third Amendment) Rules, 2010, which is quoted hereinbelow:

"Explanation 2(i)- Censure- The Censure shall be entered in the character roll of the year the allegation or omission and commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next three consecutive years after the year of allegation or omission & commission for which he or she is censured. For example, if a Government Servant is censured for the allegation or omission & commission of the year 2002-2003, it shall be entered in the character roll of 2002-2003 and its adverse effect shall be from the year 2003-2004 to 2005-2006".

21. The writ petitioner argued that the Rules, came into force in the year 2010 and the same would not apply in his case, as the alleged act of omission and commission and also the orders of punishment awarded,

are both of the period prior to addition of Explanation 2(i) to Rule 14.

22. It is not in dispute that the amended rules have not been applied with retrospective effect and to that extent, we may broadly agree with the submissions, made on behalf of the writ petitioner-respondent, that the Explanation would not apply to the present case. However, both, the writ petitioner as well as the State, seems to overlook the Government Resolution No. 5502, dated 17.05.1982, of Personnel and Administrative Reforms Department, Government of Bihar, issued under the Orders of the Governor of Bihar, covering the subject matter.

23. It appears that the Government noticed that the department had not adopted uniform approach in dealing with the punishment of *censure*. In order to bring uniformity in the matter, the Government adopted a resolution that the punishment of *censure* would relate back to the year of act of omission and/or commission. In other words, if the act of omission and/or commission is of the year 2000, the punishment of *censure* would be recorded in the confidential report of the employee of that year and it would remain effective and in force for the next three years and the employee concerned would

accordingly become entitled for promotion only after expiry of three years, i.e., in the year 2003. The fact that the said resolution has the force of law is not in dispute before us.

24. It is well accepted principle under the constitutional scheme that the executive power of the State shall extend to the matter with respect to which the legislature of the State has power to make law subject to any law made by Parliament so far as it does not offend any law made by the State Legislature or the Parliament. We have perused the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as well as Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, and we find that the executive instructions, contained in 1982 Resolution aforesaid, do not offend or supplant any rule or enactment of the State. In terms of the executive instructions, as embodied in the 1982 Resolution, the punishment of *censure* awarded, on 02.03.2009, to the writ petitioner-respondent, would relate back to the year 1999-2000, which is the year of occurrence, and the punishment of *censure* would remain enforce for three years, i.e., till 01.03.2012.

25. In view of the Government Resolution aforementioned, the adverse effect of the '*censure*'



disabled the writ petitioner from being considered for promotion up to the year 2002-03. The State Government erred in law in coming to the conclusion that the writ petitioner could be considered for promotion only with effect from 31.12.2010. The learned single Judge, too, was incorrect in taking the view that the writ petitioner did not suffer from any disability in the year 2000-01. As per the Government's said Resolution, the *censure*, though awarded in the year 2009, ought to be entered in the character roll of the employee for the year 1999-2000 and the effect thereof would operate till 2002-03, i.e., 31.03.2003. The writ petitioner, as such, would be entitled for promotion to the post of Senior Deputy Superintendent of Police with effect from 31.03.2003 and not with effect from 31.12.2010, as initially held by the Government, or with effect from 01.11.2000, as has been ordered by the learned single Judge.

26. We are, therefore, of the considered view that the appellants shall grant promotion to the writ petitioner to the post of Senior Deputy Superintendent of Police with effect from 01.04.2003. The Government, too, realizing the position of law, admitted, in its counter affidavit, that the writ petitioner had become fit for consideration for promotion after 31.03.2003. We too, in

view of 1982 Resolution, are of the opinion that the writ petitioner would be entitled for promotion with effect from 01.04.2003 and we direct accordingly.

27. The Government, in the year 2010, has not done anything different so far as punishment of *censure* is concerned; rather, it has embodied the aforesaid provisions into statutory Rules by adding Explanation 2(1) to Rule 14 of Bihar Government Servants (Classification, Control & appeal) (Third Amendment) Rules, 2010.

28. The petitioner has next prayed for granting further promotion to the post of Additional Superintendent of Police from the date his juniors were granted promotion. Admittedly, some erstwhile juniors to the petitioner were promoted to the post of Additional Superintendent of Police with effect from 31.12.2010, whereas the writ petitioner has been found fit for the post of Additional Superintendent of Police with effect from 03.03.2011. The learned single Judge held that the writ petitioner did not suffer from any disability after 10.03.2010 and, as such, he ought to have been promoted to the post of Additional Superintendent of Police from the date his juniors had been promoted. The learned single Judge noticed that the order, stopping increment with non-cumulative effect for one year, would



extinguish on 02.03.2010. Thus, the writ petitioner did not suffer from any disability after 02.03.2010. We are in agreement with the views of the learned single Judge that the *adverse effect of stoppage of increment, with non-cumulative effect, for a year* would, lapse on 02.03.2010 and the writ petitioner, as such, was entitled for promotion to the post of Additional Superintendent of Police with effect from the date his juniors had been granted promotion to the post of Additional Superintendent of Police.

29. We find that the State has done a turn around by arriving at the decision that the writ petitioner would be entitled for promotion to the post of Additional Superintendent of Police with effect from 31.06.2014. As noticed above, the reasons, given for shifting the date of promotion to 31.06.2014, is unreasonable and untenable in law.

30. While coming to the aforesaid conclusion, the Government took the view that the order of punishment, dated 02.03.2009, was set aside by this Court and the matter was remanded for fresh consideration. On remand, a fresh order of punishment was passed, on 22.02.2013, reiterating the earlier punishment. In our view, the Government has adopted a



peculiar stand that the writ petitioner would, now, remain unfit for promotion till 31.06.2014. The order of this Court, in another writ petition, directing the disciplinary authorities to reconsider the guilt as well as quantum of punishment, cannot be turned to disadvantage of the writ petitioner; more so, when the earlier punishment withholding one increment on 02.03.2009 was, in fact, reiterated by the Government on 23.3.2013.

31. If the increment was stopped for one year by the original order of punishment, dated 02.03.2009, and reiterated by a subsequent order, dated 22.02.2013, passed on remand by the High Court, the writ petitioner-respondent's disability and agony cannot be stretched from 02.03.2009 to 31.06.2014. In this regard, we can gainfully rely upon a decision of the Supreme Court, in ***L. Rajaiah v. Inspector General of Registration & Stamps, Hyderabad & Others***, reported in **(1996) 8 SCC 246**. In ***L. Rajaiah*** (*supra*), the Supreme Court has observed that if increment is stopped for five years, the disability would continue only for five years and as soon as the period of five years is over, the disability ceased to exist and the person can regain fitness for promotion. Similarly, here also, if the increment is withheld for one year, the disability for consideration of promotion would

last only for a year. Thereafter, the employee becomes entitled for promotion.

32. In the present case, the effect of withholding of increment would also relate back to the date of original punishment awarded on 02.03.2009. Hence, the adverse effect of stoppage of increment would continue from the date it becomes due, i.e. 30.06.2009, for one year i.e. up to 30.06.2010. The learned single Judge was correct in observing that the petitioner did not suffer from any disability on 31.12.2010, when his juniors were granted promotion to the post of Additional Superintendent of Police. We fully and entirely affirm the aforesaid view of the learned single Judge.

33. In the result, this appeal is partly allowed as observed and directed above. The impugned order shall accordingly stand modified to the extent indicated hereinabove.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J. : I agree.

(I. A. Ansari, J.)

**Md.Jamaluddin
Khan/AFR**

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