

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.411 of 2014

IN

LPA 578 of 2008

- =====
1. Mukesh Prasad. Son of Ghoghi Mahto, Resident of village - Amdauli Satshora, Police Station - Barh, District - Patna.
 2. Kamal Kishore Thakur, Son of Late Mahabir Thakur, Resident of village & P.O.- Malinagar, P.S.- Samastipur, District - Samastipur.
 3. Manoj Kumar Singh, Son of Late Laldeo Singh, Resident of village - Ramhar, District - Vaishali.
 4. Jai Karan Thakur, Son of Late Mahabir Thakur, Resident of village - Malinagar, P.O.- Malinagar, P.S.- Samastipur, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Director, Agriculture, Department of Agriculture, Government of Bihar, Patna.
3. Joint Director, Agriculture (Jute), Bihar, Purnea.
4. Deputy Director, Agriculture (Jute), Samastipur, Bihar.
5. Prabhat Ranjan, son of Sri Baban Ram, resident of Village- Godhra, P.O. Thakurganj, District- Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Veena Kumari Jaiswal, Adv.

Mr. Prem Prakash Poddar, Adv.

For the Respondent/s : Mr. D.K. Sinha, AAG-2

Mr. Sudhir Kumar, A.C. to AAG-2

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date: -10-2015

The present review petition, under Article 226 of the Constitution of India, has been filed by the petitioners (Respondents in Letters Patent Appeal), seeking review of the order of the Division Bench, dated 17.02.2014, passed in L.P.A. No. 578 of 2008, preferred by the State of Bihar and others against the Judgment and Order, dated 15th February, 2007, passed in C.W.J.C. No. 3861 of 2003 by which the writ petition has been allowed by the learned Single Judge.

The petitioners have further prayed to reconsider their case and uphold the order, dated 15.02.2007, passed by the learned Single Judge in C.W.J.C. No. 3861 of 2003.

2. Shorn of details, brief facts, necessary for disposal of this petition, are as under :-

- (a) The petitioners no.1 to 3 were appointed to the post of Jute Extension Supervisor on temporary basis by the Joint Director of Agriculture (Jute), Bihar, Purnea, vide orders dated 24.11.1993, 22.11.1993 and 30.12.1993 respectively. The petitioner no.4 was appointed to the post of Peon on temporary basis by the Joint Director of Agriculture (Jute), Bihar, Purnea, vide order, dated 30.12.1993. Let it be noted here that others, similarly situated, were also appointed in the year 1993 on Class III and Class IV posts under the orders passed by the Joint Director of Agriculture (Jute), Bihar, Purnea.
- (b) Since the appointments made by the Joint Director of Agriculture (Jute), Bihar, Purnea, were not in accordance with the prescribed procedure of the State Government, when it came to the notice of the Department of Agriculture, Government of Bihar, the matter was examined and show cause notices were issued to the appointees with regard to illegality/irregularity in their

appointments.

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- (c) After considering the replies so filed by the petitioners and others similarly situated, the orders of termination, dated 09.08.2002, under different memo numbers, were issued by the Joint Director of Agriculture (Jute), Bihar, Purnea.
- (d) Aggrieved and dissatisfied with the orders of termination, all those persons, including the petitioners, preferred several writ petitions before the High Court. The petitioners, along with one other, namely, Prabhat Ranjan, preferred C.W.J.C. No. 3861 of 2003 before the High Court.
- (e) The learned Single Judge, vide para 3 of his order, dated 15.02.2007, took into consideration the stand of the State and observed as under :-

“3. Counter affidavit has been filed on behalf of the Director, Administration, Department of Agriculture, Government of Bihar, where it has been admitted that an advertisement was published inviting applications for appointment on the post of Jute Extension Supervisor, but petitioners’ appointments were not made on the basis of such advertisement rather they were appointed in the year 1993 itself by the Deputy Director of Agriculture, Jute, Samastipur, Bihar, who was not competent to make any such appointment. The counsel for the State has also submitted that the appointment of the petitioners were not made following the procedure for appointment of Class III posts. The Department of Personnel and Administrative Reforms vide



letter no. 3/M-1097/90.K-6, dated 01.01.1993, has given a direction for appointment on the post of Class III employees. These appointments can only be made through a competitive examination to be conducted by the Bihar Public Service Commission and only on recommendation of the Bihar Public Service Commission appointment can be made by the Joint Director, Agriculture, Jute, Purnea. In case of the petitioners, neither procedure was followed nor the competent authority has issued the appointment letters. Petitioners have rightly been terminated from their service after issuing show cause notice and assigning proper opportunity.”

- (f) Learned Single Judge, thereafter, proceeded to consider the case of the petitioners and held as under :-

“4. On the last occasion, the counsel appearing for the respondents was directed to seek specific instructions regarding the authority competent to appointment employees on Class III post in the Agriculture Department. The instruction is received by the counsel for the State that Joint Director of Agriculture, Jute, Bihar, Purnea, is the competent authority for appointing on Class III post. Annexure 4 is the order, issued by the Joint Director of Agriculture, Jute, Bihar, Purnea, confirming the appointment of the petitioners from the date of their appointment on these posts, in this view their appointment has been made by a competent authority. Petitioners remained in service since 1993 and after so many years same authority, who has confirmed the appointment, has issued the termination letter on the ground that it was not made by the competent authority. The ground which has been assigned for terminating the petitioners from their service is not sustainable in view of the order, contained in Annexure-4, by which the Joint Director of Agriculture, Jute, Bihar, Purnea, has confirmed the appointment of the petitioners on their post right from the date of their appointment.

5. I find that the orders, impugned, contained in Annexure-1 series is fit to be quashed.



Respondent no.4 is directed to reinstate the petitioners forthwith on their post. Let them discharge their duties on their post. So far the payment of salary and other allowance are concerned, since petitioners were illegally terminated from their service, they are entitled for their salaries as well as other allowances for discharging duty on the post of Jute Extension Supervisor. The arrears of salary and other allowances as well as the consequential benefits for which the petitioners are entitled must be allowed to them within six weeks from the date of production/communication of the order.

6. Accordingly, this application is allowed.”

- (g) Aggrieved and dissatisfied with the order of the learned Single Judge, the State of Bihar preferred an appeal before the Division Bench, which gave rise to L.P.A. No. 578 of 2008. However, the Division Bench dismissed the said LPA on the ground of delay under order, dated 31.07.2008.
- (h) Aggrieved and dissatisfied with the order of the Division Bench, the State of Bihar preferred an appeal before the Supreme Court, vide SLP(C) No. 17021 of 2009, which was converted into Civil Appeal No. 5604 of 2011. After hearing the parties, the Supreme Court, vide order, dated 15th July, 2011, remitted the matter back to the Division Bench of this Court for hearing the Letters Patent Appeal on merits. However, the Supreme Court directed the State of Bihar to pay costs of Rs.10,000/- to each of the

five writ petitioners.

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- (i) In obedience of the order of the Supreme Court, each of the petitioners was paid Rs.10,000/- on 05.08.2011 and receipts thereof were filed before this Court.
- (j) On remand, LPA No. 578 of 2008 was heard by a Division Bench of this Court and vide order, dated 17.02.2014, the appeal preferred by the State of Bihar against the order of the learned Single Judge, passed in C.W.J.C. No. 3861 of 2003, was allowed observing as under :-

“The matter at issue is the termination of service of the writ petitioners, class-III and class-IV employees, serving under the Assistant Jute Development Officer, Katihar. Their service came to be terminated on 9th August 2002 on the ground that their induction in service was illegal made without following the due procedure. The challenge to the said order dated 9th August 2002 in above C.W.J.C. No. 3861 of 2003 has succeeded before the learned Single Judge, therefore, this Appeal.

The appellants have relied upon the judgment of the Division Bench of this Court dated 15th April 2008 in C.W.J.C. No. 101 of 2005. In view of the diverse opinion of two benches of this Court, the said petition was referred to the Division Bench. The Bench has recorded that **“on going through the facts we find that other similarly appointed employees whose services had been terminated by orders issued on the same date, could not succeed to get any relief and their writ petitions were dismissed by orders passed in the year 2003 contained in annexures 9 and 10. It is further found that the appointment procedure prescribed under law was not followed and the**



appointments were clearly in teeth of requirements of Articles 14 and 16 of the Constitution of India. It is further found that the judgments and orders passed earlier in the year 2003 contained in annexures 9 and 10 in identical facts and circumstances were not brought to the notice of the single judge who passed the judgment and order dated 15-2-2007 contained in annexure-11". The Bench has held that the judgment and order dated 15th February 2007 passed in C.W.J.C. No. 3861 of 2003 (the judgment under challenge in this Appeal) was per-incuriam the earlier judgments in C.W.J.C. No. 7938 of 2002 decided on 8th May 2003, C.W.J.C. No. 424 of 2000 decided on 25th June 2003 and C.W.J.C. No. 5333 of 2004 decided on 8th August 2005.

In view of above referred judgment in C.W.J.C. No. 101 of 2005, this Appeal is allowed. The impugned order dated 15th February 2007 passed in C.W.J.C. No. 3861 of 2003 is set aside. C.W.J.C. No. 3861 of 2003 is dismissed."

(k) The petitioners challenged the aforesaid order, dated 17.02.2014, before the Supreme Court in Special Leave to Appeal (C) No. 11524 of 2014. While dismissing the Special Leave Petition as withdrawn, vide order, dated 05.09.2014, the Supreme Court granted liberty to the petitioners to file review application before this Court.

(l) Thereafter, the instant civil review petition, seeking review of the order and judgment, dated 17.02.2014, has been filed.

3. Mrs. Veena Kumari Jaiswal, learned counsel for the petitioners submitted, that this Court has not appreciated the facts of



the case in correct perspective. She has submitted that the petitioners were appointed on sanctioned and vacant posts by the competent authority and their appointments to the posts cannot be said to be illegal appointments after a lapse of more than nine years of their posting. Mrs. Veena Kumari Jaiswal has also submitted that the petitioners, who had applied for the respective posts, held by them pursuant to an advertisement published in the Daily newspaper, cannot be said to be illegal appointees. She has further submitted that LPA No. 578 of 2008 was allowed vide order, dated 17.02.2014, without affording opportunity of hearing to the petitioners, as no fresh notice was issued during pendency of the aforesaid LPA No. 578 of 2008, when the matter was heard on being remanded by the Supreme Court, vide order and judgment, dated 15.07.2011.

4. Per contra, Mr. Sudhir Kumar, learned counsel for the State, has submitted that against the judgment and order, dated 31st July, 2008, passed in LPA No. 578 of 2008, by a Division Bench of this Court, whereby the Letters Patent Appeal preferred by the State was initially dismissed as time barred, the State carried the matter to the Supreme Court, and, vide order, dated 15th July, 2011, passed in Civil Appeal No. 5604 of 2011, the Supreme Court allowed the appeal and condoned the delay in filing the present Letters Patent Appeal on the condition that the State Government would pay costs of Rs.10,000/- to each of the writ petitioners, whereafter, each of the



writ petitioners of C.W.J.C. No. 3861 of 2003, except Petitioner No.4 Prabhat Ranjan (who is not a petitioner in the present review petition), had received a sum of Rs.10,000/- on 5th August, 2011, in person, and had put their respective signatures on the receipts, which are in the record of this case, whereas the amount of cost, payable to the Petitioner No.4 of C.W.J.C. No. 3861 of 2003, namely, Prabhat Ranjan, had been received by his father Baban Rai, on 12th August, 2011 and, on receipt of the cost so paid, each of the petitioners knew fully well that LPA No. 578 of 2008 had been remanded by the Supreme Court for hearing on merits. Mr. Sinha points out that upon appeal having been remitted to this Court for consideration on merits, notices were issued to the petitioners on several occasions, but they evaded receiving the notices personally and the notices were served on their family members and, vide order, dated 12.02.2014, the Division Bench held that the petitioners, having appeared before the Supreme Court and having received the amount of cost, were aware of the pendency of the present appeal and, therefore, no further notice was required to be given to them.

5. It is contended by Mr. Sinha, learned counsel that the petitioners and other similarly situated persons were appointed, in the year 1993, on Class III and Class IV posts under the Joint Director, Agriculture (Jute), Purnea, Bihar, but their appointments were not in accordance with the prescribed procedure of the State Government



and when this fact came to the notice of the Department, the petitioners were issued show cause notices with regard to illegality in their appointments and, upon considering their replies, the orders of termination, dated 09.08.2002, were issued by the Joint Director, Agriculture (Jute), Bihar, Purnea, under different memo numbers to the petitioners and others similarly situated, whereafter all the terminated employees filed several writ petitions and except the writ petition of these petitioners, all other writ petitions, challenging the termination orders, were dismissed by this Court under various orders, which have been taken note of by the Division Bench in its order, dated 17.02.2014.

6. Learned counsel for the State has submitted that in case of similarly circumstanced candidate, namely, *Diwakar Bharti* (C.W.J.C. No. 101 of 2005), whose service was terminated by order, dated 09.08.2002, on the ground that he had not been appointed by the competent authority and that the procedure for appointments prescribed by law had not been adopted at the time of making such appointment, reliance was placed on the judgment of the learned Single Judge passed in C.W.J.C. No.3861 of 2003. In that case, it was brought to the notice of the learned Single Judge that there were two earlier judgments/orders, dated 08.05.2003 and 25.06.2003, passed in C.W.J.C. Nos. 7938 of 2002 and 424 of 2003, which went against the petitioners of those cases, whereas the judgment, dated 15.02.2007,



passed in C.W.J.C. No.3861 of 2003 went in favour of the petitioners. In the face of two conflicting judgments relating to the same facts, the case of *Diwakar Bharti* was referred by the learned Single Judge to the Division Bench and after hearing the parties, the Division Bench held that the judgment/order, dated 15.02.2007, passed in **C.W.J.C. No. 3861 of 2003 (Mukesh Prasad & Ors. Vs. The State of Bihar & Ors.)** was *per incuriam* in view of earlier judgments and orders in C.W.J.C. Nos. 7938 of 2002 and 424 of 2003. Lastly, it has been urged that there was no mistake or error in the order, dated 17.02.2014, much less, error apparent on the face of the record.

7. We have heard the respective counsel for the parties and perused the record.

8. We find that the petitioners and others were illegally appointed by the then Joint Director, Agriculture (Jute), Bihar, Purnea, by different orders in the year 1993 without following the proper procedure. The matter was enquired by the Department and after affording an opportunity to the petitioners, their appointments were held to be illegal. We do find from the record that an advertisement was published in a Hindi Daily “Nav Bharat Times” on 07.12.1994, vide Advertisement No.1/94, but the appointments, in question, were made in the year 1993 itself. Hence, the contention of the petitioners that they were appointed pursuant to the advertisement in the year 1994 is erroneous on fact.

9. We further find from the record that as per Resolution No. 3/M-1097/90 K-6, dated 02.01.1993, issued by the Department of Personnel and Administrative Reforms, Government of Bihar, the appointment, on the posts of Class III employees, was to be made through competitive examination to be conducted by the Bihar Public Service Commission. It is not the case of the petitioners that they were appointed through any competitive examination conducted by the Bihar Public Service Commission. Apparently, the petitioners entered service through back-door.

10. We further find that similarly circumstanced appointees of Class III and Class IV posts under the Joint Director, Agriculture (June), Bihar, Purnea and Samastipur, whose services were not in accordance with the prescribed procedure of law and who were also terminated from service, vide order, dated 09.08.2002, had challenged the order of termination before this Court vide several writ petitions. In the case of *Prem Kumar Rai and another*, vide order, dated 08.05.2003, passed in *C.W.J.C. No. 7938 of 2002*, a learned Single Judge of this Court, upon hearing the parties, dismissed the writ petition observing as under :-

“... The petitioners have failed to satisfy the Court that there was any advertisement, process of selection through which petitioners were selected and as the appointment of the petitioners has not been made through process of selection and initially not by the competent authority though subsequently it is contended that approval had been taken this Court is not inclined

to interfere in the order removing the petitioners from service.

The writ application fails and is dismissed.”

11. Similarly, in the case of *Amit Kumar and another (C.W.J.C. No. 424 of 2003)*, whose services were also terminated on the ground that the authority, who had made the appointment, was not competent and the prescribed procedure was also not followed, the learned Single Judge dismissed the writ petition, vide order, dated 25.06.2003, observing as under:-

“It is not necessary to make observation on facts for it is agreed by the counsel for the petitioner that the case of the petitioners stands on similar footing as those of Prem Kumar and others whose writ petition (CWJC No. 7938/2002) has been dismissed by this Court on 8.5.2003. He says that while dismissing the writ petition observation may be made, as in the other case, that if any amount is due to the petitioner he may be paid the same.

After hearing counsel for the parties, I would observe that if it is a fact that the petitioner worked for which he has not been paid, it would be open to him to make representation. Subject to verification of the records due payment may be made to them as early as possible.

With this observation, the petition stands dismissed.”

12. We further find from the record that the writ petition of another terminated employee Vijay Kumar was dismissed by a learned Single Judge of this Court, vide order, dated 08.08.2005, in C.W.J.C. No. 5333 of 2004, taking into consideration the order

passed by a Bench of this Court in the case of ***Prem Kumar Rai and another*** (Supra).

13. Further, the case of yet another terminated employee ***Diwakar Bharti***, who had preferred C.W.J.C. No. 101 of 2005 challenging his termination order dated 09.08.2002 and had placed reliance on the judgment/order passed by a learned Single Judge in the case of the petitioners in C.W.J.C. No.3861 of 2003, was referred to the Division Bench by the learned Single Judge because it has come to the notice of the learned Single Judge that there was two earlier judgments, dated 08.05.2003 and 25.06.2003, passed in C.W.J.C. Nos.7938 of 2002 and 424 of 2003, went against the petitioners of those cases. The matter of ***Diwakar Bharti*** (Supra) was considered by a Division Bench of this Court. After hearing the parties, the Division Bench dismissed C.W.J.C. No. 101 of 2005, observing as under:-

“On consideration of all the aforesaid facts and materials we find substance in the contention advanced on behalf of the State that the judgment and order dated 15-02-2007 passed in C.W.J.C. No.3861 of 2003 (Mukesh Prasad and others Vrs. The State of Bihar & Ors.) contained in annexure-11 must be declared to be per incurian of earlier judgments and orders contained in annexures 9 and 10. We also find substance in his submission that since the entry of the petitioner was in violation of Constitutional mandate of Equality, this court should not issue any writ to interfere with the impugned order whereby the service of the petitioner has been terminated. In view of the aforesaid findings this writ petition is dismissed.”



14. We also find substance in the arguments advanced by the learned counsel for the State that after the appeal was remitted back by the Supreme Court to this Court, notices were issued to the petitioners several times and were received by the family members of the petitioners. It would appear from the record that despite notices being sent on the addresses given by the petitioners, the same were not being received by the petitioners personally. The Division Bench directed LPA No. 578 of 2008 to be notified under the heading “For Admission” as each writ petitioner had received Rs.10,000/- on 5th August, 2011, and had acknowledged receipt of the amount pursuant to the order, dated 15th July, 2011, passed by the Supreme Court in Civil Appeal No. 5604 of 2011.

15. The Division Bench opined that the petitioners having appeared before the Supreme Court and having received the amounts of cost were aware of the pendency of the present appeal and, therefore, no further notice was required to be given to them.

16. We are of the view that the petitioners deliberately evaded appearance before the Division Bench after the matter was remitted back by the Supreme Court and, hence, we do not find any substance in the submission of learned counsel for the petitioners that the order, dated 17.02.2014, was passed by the Division Bench without affording opportunity of hearing to the petitioners.

17. The petitioners have filed the present review petition



under Article 226 of the Constitution of India. It is true that there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review, which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or correct grave errors or palpable errors committed by it, but the exercise of power of review is restricted. The power of review may be exercised for correction of a mistake or error apparent on the face of the record, but cannot be exercised where different views, on the same subject, are possible. The limitations on the power of the Court under Order XLVII Rule 1 of the Code of Civil Procedure are similar in application to the jurisdiction available to the High Court under Article 226 of the Constitution of India. The power of review cannot be treated as an appeal in disguise and can be exercised only for correction of a patent error of law, which is apparent on the face of the record and not an error which has to be traced after elaborate argument being noted for establishing it. A review of a judgment is not permissible if the only ground for review is that the point is not dealt in correct perspective.

18. In *Col. Avtar Singh Sekhon v. Union of India*, [1980 *Supp SCC 562*], the Supreme Court held in paragraph 12 as under :-

“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness

or results in miscarriage of justice. In ***Sow Chandra Kante v. Sheikh Habib, (1975) 1 SCC 674***, this Court observed : (SCC p. 675, para 1)

“A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.”

19. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Supreme Court in ***Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715]***, in paragraph 7, in the following words :-

“7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In ***Thungabhadra Industries Ltd. v. Govt. of A.P. (1964) 5 SCR 174*** (SCR at p. 186) this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the record’). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an ‘error apparent on the face of the record’, for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by ‘error apparent’. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.”

20. The error, which has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record.

21. In the case of *Satyanarayan Laxminarayan Hegde vs Millikarjun Bhavanappa Tirumale [AIR 1960 SC 137]*, the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the face of the record :-

“17... An error, which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ...”

22. In *Lily Thomas v. Union of India, [(2000)6 SCC 224]*, the principle was reiterated by the Supreme Court with a caution that in exercise of power of review, the Court may correct the mistake but not to substitute the view. The mere possibility of two views on the same subject is not a ground for review.

23. In the light of the settled legal position as discussed above and having gone through the present review application, we find that no error apparent, on the face of the record, has been brought out by the review petitioner warranting review of the order, dated

17.02.2014. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise.

24. Thus, we are of the opinion that in the application, under consideration, the petitioner has failed to establish that there was an error or a mistake apparent on the face of the record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

25. For the foregoing reasons, this review application is held to be without any merit and is accordingly dismissed.

(Ashwani Kumar Singh, J.)

I. A. Ansari, ACJ:- I agree.

(I. A. Ansari, ACJ.)

Pradeep/-

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