

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2012

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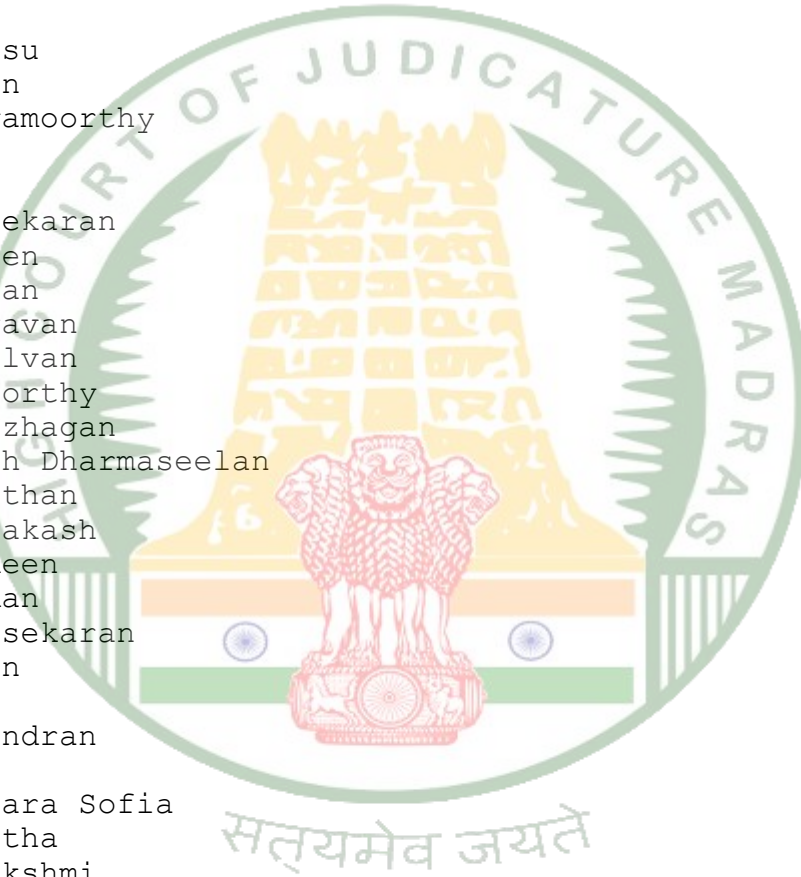
THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.4827 of 2012

and

M.P.Nos.1 and 2 of 2012

- 1.T.S.Anbarasu
- 2.M.Murugesan
- 3.S.P.Sathiyamoorthy
- 4.N.R.Sundar
- 5.N.Pandiyan
- 6.M.Chandrasekaran
- 7.A.Sirajudeen
- 8.R.Elankannan
- 9.R.Veeraragavan
- 10.Murugu.Selvan
- 11.T.Yagnamoorthy
- 12.N.S.Arivazhagan
- 13.Y.Ravinath Dharmaseelan
- 14.A.Viswanathan
- 15.P.Veeraprakash
- 16.A.Kamaludeen
- 17.T.Jayaraman
- 18.T.Chandrasekaran
- 19.S.Muugesan
- 20.S.Selvam
- 21.R.Ravichandran
- 22.S.Santhi
- 23.B.Lily Clara Sofia
- 24.K.Premalatha
- 25.P.Jothilakshmi
- 26.S.Jayasanthi
- 27.S.Evelyn Vasanth Kumari
- 28.A.Vahitha Begam
- 29.S.Vetriselvi
- 30.M.Santhi
- 31.T.Arulselvi
- 32.M.Revathy
- 33.R.Hemalatha
- 34.S.Neelaveni
- 35.R.Uthaya Bharathi
- 36.R.Eswari
- 37.K.Sujatha
- 38.M.Ravichandran
- 39.M.Puzhlenthe Kumar
- 40.P.Ramesh
- 41.S.Mayavel



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42.K.Anbuselvi
43.G.Venkata Subramanian
44.K.Vadivelu
45.M.Chinnaiya
46.T.Chandra
47.T.Vathsala
48.R.Thenmozhi
49.K.Jeyashree
50.M.Jeevarani
51.T.Sathishkumar
52.K.Allaudeen
53.A.Claret
54.K.Indiragandhi
55.M.Dhanabal
56.J.Asha Rani
57.S.Kirubakaran
58.R.Perumal
59.S.David
60.S.Selvarajan
61.M.Liyakkath Ali
62.V.Sinnakkannu
63.C.Subramanian
64.A.Manjula Devi
65.R.Pappathy
66.K.Periyasamy
67.R.Kalidas
68.M.thamizhazhagan
69.V.Ezhilarasi
70.K.Sengathir Selvan

... Petitioners

Vs.

1.The State of Tamil Nadu,
rep by its Secretary to Government
School Education Department,
Fort St George,
Chennai-600 009.

2.The Director,
School Education,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai-600 006.

3.The Director,
Teachers Recruitment Board,
4th Floor, EVK Sampath Buildings,
DPI Compound, College Road,
Chennai-600 006.

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus to forbear the respondents from applying G.O.(Ms)No.181, School Education (CZ) Department, dated 15.11.2011 and insisting on a pass

in Teacher Eligibility Test as a minimum qualification for appointment to the posts of Graduate Assistants in classes VI to X in the schools coming under the Directorate of School Education and Elementary Education to the petitioners who have completed the certificate verification process for the said posts based on employment exchange seniority and consequently direct the respondents to select the petitioners who have completed the selection process conducted by the third respondent to the posts of Graduate Assistants in classes VI to X only based on employment exchange seniority, communal rotation and certificate verification.

For Petitioner : Mrs.Nalini Chidambaram, SC
for Ms.C.Uma

ORDER

In this writ petition, the petitioners have challenged the order passed by the State Government in G.O.Ms.No.181, School Education Department, dated 15.11.2011 so far as it has prescribed Teacher Eligibility Test even for persons who have completed certificate verification conducted by the Teachers Recruitment Board for appointment to the post of Graduate Assistants and for consequential direction to the respondents to select the petitioners as Graduate Assistants on the basis of the seniority in the employment exchange, communal rotation and certificate verification.

2.It is the case of the petitioners that by G.O.Ms.No.181, the State Government has prescribed Teacher Eligibility Test for all recruitments to the post of teachers in accordance with the directions contained under Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (for short RTE Act). Under the said Act, the National Council for Teacher Education (NCTE) has been appointed as the Academic Authority by the Government of India. The Academic Authority has indicated that all the States in which teachers are recruited in future for the elementary segment should have passed the Teacher Eligibility Test to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for this purpose. Therefore, the State Government on the basis of the said direction had specified that teachers who do not have minimum qualification, were given five years time to acquire the minimum qualification. For all recruitments in respect of even teachers working in unaided private schools are also required to pass the said test within five years. So far this State was concerned, persons for whom minimum qualification prescribed was Diploma in Teacher Education as well as Graduate Assistants and who are teaching classes 6 to 8 and have acquired B.Ed. qualification, should pass Teacher Eligibility Test. In the case of the secondary grade teachers, the earlier recruitment was done on the basis of the District level employment registration and seniority.

3.When the same was challenged before this Court in a writ petition in Unemployed Secondary Grade Teachers Welfare Association

Vs. State of Tamil Nadu reported in 2008 (4) LLN 560, this Court held that the names sponsored by the District Level employment exchange was violative of Article 16(1) of the Constitution. Therefore, a direction was given to adopt the Statewide employment exchange seniority list for the purpose of recruitment. This order passed by the Division Bench came to be challenged by the aggrieved persons before the Supreme Court in SLP(Civil) Nos.18227 and 18228 of 2008. While granting leave, the Supreme Court refused to grant stay, but, on the other hand, had directed the State Government to follow the Statewide seniority in the employment registration while appointing Secondary Grade Teachers from the list of eligible persons from all the District employment exchanges and by newspaper public advertisements throughout the State. The Supreme Court had also stated that the said arrangement will apply even for recruitment to the matters which are pending disposal of appeal before the Supreme Court.

4. In the light of the said direction, the State Government had changed the recruitment policy framed for the year 2006-07 for recruiting graduate assistants from written examination to that of the Statewide registration seniority in employment exchange. But, in the light of the directions issued by the Supreme Court as well as the subsequent directions issued by the NCTE, which became the academic authority under Section 23(1), the State Government had issued guidelines that so far as the Secondary Grade Teachers are concerned, the direction of the Supreme Court in adopting Statewide seniority list will be taken as the criteria for appointment until the appeals before the Supreme Court are disposed of. The general policy directing teachers who are to be appointed as Secondary Grade teachers to teach classes of middle schools, high schools and higher secondary schools will have to take written examination, i.e., Teacher Eligibility Test in accordance with the guidelines framed by the NCTE and certificate verification will have to be followed. The TRB was designated as the Nodal Agency for conducting of Teacher Eligibility Test and for recruitment of teachers.

5. The contention raised by the petitioners was that they have already gone through the selection process in the earlier recruitment process. Therefore, the persons who went through earlier selection process cannot be subjected to the present order of the State Government. Therefore, to that extent, the State Government should be prohibited from insisting them from writing any examination for future recruitment. Since the only question of certificate verification alone was the earlier criteria and they were having gone through the same, they should be given appointment orders. In essence, they wanted to contend that at the time of issuance of appointment orders prescribing new qualification was illegal. They cannot introduce a new testing process. Secondly, in respect of secondary grade teachers, there is no such insistence and that the past practice of recruitment through employment exchange sponsorship based upon seniority cannot be dislodged.

6. In any event, when once the Parliament Act prescribed a particular recruitment mode, there is no choice of the State

Government deviating from that process, lest the educational qualification given by such institutions will be de-recognised by the NCTE.

7. In this context, it is necessary to refer to the implications of the RTE Act . Sections 23 and 38 of the RTE Act reads as follows:

23. Qualifications for appointment and terms and conditions of service of teachers.-(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

38. Power of appropriate Government to make rules.-(1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) to (k) omitted

(1) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of Section 23;

8. Even when the UGC prescribed eligibility test in the form of State level Entrance Test or National Entrance Test as the criteria for appoint of college and University teachers, the Supreme Court has upheld the prescription of such criteria by the highest academic decision body vide its decision in University of Delhi v. Raj Singh reported in 1994 Supp (3) SCC 516 and in paragraphs 20 and 24, it was observed as follows:

"20. The ambit of Entry 66 has already been the subject of the decisions of this Court in the cases of the Gujarat University¹ and the Osmania University². The UGC Act is enacted under the provisions of Entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of Entry 66. The principal function of the UGC is set out in the opening words of Section 12, thus:

"It shall be the general duty of the Commission to take ... all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination

and research in Universities”

It is very important to note that a duty is cast upon the Commission to take “all such steps as it may think fit ... for the determination and maintenance of standards of teaching”. These are very wide-ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a postgraduate degree from one University is not necessarily of the same standard as the holder of the same postgraduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of Entry 66 and the UGC Act inasmuch as it is intended to co-ordinate standards and the UGC is armed with the power to take all such steps as it may think fit in this behalf. For performing its general duty and its other functions under the UGC Act, the UGC is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation [clause (d)]. The UGC is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of such functions [clause (j)]. These two clauses are also wide enough to empower the UGC to frame the said Regulations. By reason of Section 14, the UGC is authorised to withhold from a University its grant if the University fails within a reasonable time to comply with its recommendation, but it is required to do so only after taking into consideration the cause, if any, shown by the University for such failure. Section 26 authorises the UGC to make regulations consistent with the UGC Act and the rules made thereunder, inter alia, defining the qualifications that should ordinarily be required for any person to be appointed to the teaching

staff of a University, having regard to the branch of education in which he is expected to give instruction [clause (e) of sub-section (1)]; and regulating the maintenance of standards and the coordination of work or facilities in Universities [clause (g)]. We have no doubt that the word 'defining' means setting out precisely or specifically. The word 'qualifications', as used in clause (e), is of wide amplitude and would include the requirement of passing a basic eligibility test prescribed by the UGC. The word 'qualifications' in clause (e) is certainly wider than the word 'qualification' defined in Section 12-A(1)(d), which in expressly stated terms is a definition that applies only to the provisions of Section 12-A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definition section, namely, Section 2.

24. It is now appropriate to clarify the direction that the Delhi High Court issued in allowing the writ petition. It held that the notification dated 19-9-1991, by which the said Regulations were published, was valid and mandatory and the Delhi University was obliged under law to comply therewith. The Delhi University was directed to select lecturers for itself and its affiliated and subordinate colleges strictly in accordance with the notification. Put shortly, the Delhi University is mandated to comply with the said Regulations. As analysed above, therefore, the Delhi University may appoint as a lecturer in itself and its affiliated colleges one who has cleared the test prescribed by the said Regulations; or it may seek prior approval for the relaxation of this requirement in a specific case; or it may appoint as lecturer one who does not meet this requirement without having first obtained the UGC's approval, in which event it would, if it failed to show cause for its failure to abide by the said Regulations to the satisfaction of the UGC, forfeit its grant from the UGC. If, however, it did show cause to the satisfaction of the UGC, it not only would not forfeit its grant but the appointment made without obtaining the UGC's prior approval would stand regularised."

9. Subsequently, in Andhra Pradesh Public Service Commission Vs. Balaji Badhavath reported in (2009) 5 SCC 1, the Supreme Court upheld the right to conduct preliminary examination and in paragraph 29, it was observed as follows:

"29. Indisputably, the preliminary examination is not a part of the main examination. The merit of the candidate is not judged thereby. Only an eligibility criterion is fixed. The papers for holding the examination comprise of general studies and mental ability. Such a test must be held to be necessary for the purpose of judging the basic eligibility of the candidates to hold the tests. How and in what manner the State as also the Commission would comply with the constitutional requirements of Article 335 of the Constitution of India should ordinarily not be allowed to be questioned."

10. Therefore, there was no illegality in prescribing such test as the minimum requirement for entry. It is in exercise of power under the Central enactment, the directions have been issued. The State Government is bound to obey the same. Hence the petitioners cannot be heard to challenge the prescription of criteria for entry into the Government service as illegal.

11. As to whether their selection should be considered on the basis of the earlier process based upon certificate verification done by the TRB, it must be noted that mere inclusion of names in the select list will not give right to get employment as held by the Supreme Court in *Rakhi Ray v. High Court of Delhi* reported in (2010) 2 SCC 637 and in paragraph 24, it was observed as follows:

"24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment."

12. Further, it cannot be said that they have got vested right and that appointment should be given. In this context, it is necessary to refer to a judgment of the Supreme Court in *State of M.P. v. Sanjay Kumar Pathak* reported in (2008) 1 SCC 456 and in paragraphs 15, 18, 21, 22 and 24, it was observed as follows:

"15. The respondents do not dispute before us that the tabulation of the marks obtained by them was not finalised. For the purpose of selection, the marks allotted to each of the candidates should be known to the members of the Selection Committee. Members of the Selection Committee before preparing the select list were entitled to undergo a

consultative process so as to enable them to arrive at a consensus in regard to the candidates who should be appointed. As the tabulation process itself was not completed, the question of preparing any select list also did not arise.

18..... As the selection process itself was not complete, there was nothing before the Tribunal as also the High Court to indicate that they had acquired legal right of any kind ⁴⁶³ whatsoever. Even where, it is trite, the names of the persons appeared in the select list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or mala fide. The State, thus, subject to acting bona fide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India, is entitled to take a decision not to employ any selected (sic candidate) even from amongst the select list.....

21. In *K. Jayamohan v. State of Kerala*⁴ this Court held: (SCC p. 171, para 5)

"5. It is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment. It is open to the Government to make the appointment or not. Even if there is any vacancy, it is not incumbent upon the Government to fill up the same. But the appointing authority must give reasonable explanation for non-appointment. Equally, the Public Service Commission/recruitment agency shall prepare a waiting list only to the extent of anticipated vacancies. In view of the above settled legal position, no error is found in the judgment of the High Court warranting interference."

(See also *Munna Roy v. Union of India*⁵.)

22. In *All India SC&ST Employees' Assn. v. A. Arthur Jeen*⁶ it was opined: (SCC p. 387, para 10)

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in

*Shankarsan Dash v. Union of India*². Para 7 of the said judgment reads thus: (SCC pp. 50-51)

'7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha*⁷, *Neelima Shangla v. State of Haryana*⁸ or *Jatinder Kumar v. State of Punjab*⁹."

24. In *Pitta Naveen Kumar v. Raja Narasaiah Zangiti*¹¹ this Court observed: (SCC p. 273, para 32)

"32. The legal position obtaining in this behalf is not in dispute. A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise."

In a situation of this nature, no appointment could be made by the State in absence of the select list. The State could not substitute itself for the Selection Committee."

13. Further the Supreme Court has held that even when selection was made and subsequently it was cancelled, there is no right to question the same, vide its judgment in *East Coast Railway*

v. Mahadev Appa Rao reported in (2010) 7 SCC 678 and in paragraphs 14 to 17, it has been held as follows:

"14.It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

15.To the same effect is the decision of this Court in UT of Chandigarh v. Dilbagh Singh¹⁰ where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a mala fide manner. That was also a case where the selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".

16.Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step-in-aid of a possible appointment in their favour, were entitled

to is to ensure that the selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner.

17.It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts."

14.As held by the Supreme Court, the candidates do not have indefeasible right to claim appointment against the advertised posts. If the State explains the reason for prescribing the particular mode of selection and cancellation of the earlier process, such a decision cannot be frowned upon as violative of Articles 14 and 16 of the Constitution. On the other hand, in this case, the impugned G.O clearly explains the mandatory directions issued under the RTE Act which has to be obeyed by the State Government.

15.Secondly, the State Government has taken a policy decision to screen the candidates before their entry to the post. In these days because of mushrooming the Teachers Training Institutes and colleges all over State, such standardization process is inevitable. The petitioners cannot be heard to say that their case should be treated differently only because of their selection in the earlier selection process and on the basis of the old policy.

16.In view of the above factual matrix and legal precedents, the petitioners have not made out any case. Hence the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed.

Sd/
Asst.Registrar

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Sub.Asst.Registrar

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To

1.The Secretary to Government
The State of Tamil Nadu,
School Education Department,
Fort St George,
Chennai-600 009.

2.The Director,
School Education,
4th Floor, EVK Sampath Maaligai,
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Teachers Recruitment Board,
4th Floor, EVK Sampath Buildings,
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1 cc to Mr.C.Uma , Advocate, Sr.No.14309

1 cc To Government Pleader, SR.No.14938

W.P.NO.4827 of 2012

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