

*** HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

HON'BLE SMT JUSTICE ANIS

+ WRIT APPEAL (SR) No.160368 of 2015

% Dated 29.10.2015

K. Ramachandran and 20 others ... Appellants

Vs.

\$ State of Andhra Pradesh and 39 others ... Respondents

! Counsel for the appellants : Sri P.Suresh Reddy

^ Counsel for the respondents : learned Advocate General

Government Pleader for Home

Government Pleader for GAD

Sri P.V. Krishnaiah

Sri B. Narayana Reddy

Sri M. Prasad Rao

Sri B. Balakishan

Sri P. Kesava Rao

<GIST:

> HEAD NOTE:

? Cases referred

1. (1997) 3 SCC 261
2. (2010) 4 SCC 554

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT APPEAL (SR) No. 160368 OF 2015

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Appeal is preferred by third parties seeking leave of this Court to prefer the Writ Appeal against the interim order granted by the learned Single Judge of this Court while issuing notice before admission in the main Writ Petition No. 26558 of 2015. The interim direction granted by the learned Single Judge is as follows:

“ In the meantime, there shall be interim direction to the 3rd respondent to take necessary steps to examine the issue of fixation of seniority of the Deputy

Superintendent of Police (Dy. SPs.) by reviewing G.O.Ms.No. 108, Home Department, dated 23.06.2014, with reference to the grievance of the direct recruiters of Dy. SPS., and promoted Dy. SPs., as requested by the Director General of Police, in R.C.No. 54 No. 254.GB/2014, dated 29.04.2015l as expeditiously as is possible.”

The writ petitioners are stated to be directly recruited Deputy Superintendents of Police. They have already approached the Andhra Pradesh Administrative Tribunal with regard to the dispute concerning the *inter se* seniority between them and the promotee officers. O.A.Nos. 4287, 4286 of 2014 and O.A.No. 1248 of 2015 moved by them, in that regard, are still pending. With a view to maintain the Writ Petition before a learned Single Judge, the petitioners have prayed for a writ of mandamus duly declaring the inaction of Respondents 3, 4, 5 and 6 in not re-examining and reviewing the orders contained in G.O.Ms. No. 108, Home Department, dated 23.06.2014 despite noticing various irregularities and illegalities that took place while issuing those orders, as illegal. They also prayed for a direction to Respondents 1 and 2 to constitute an independent Committee to find out as to who are responsible and with what motive those orders have been issued and if necessary, by ordering for investigation by the Central Bureau of Investigation (CBI).

Heard Sri P.V. Krishnaiah, learned counsel for the writ petitioners and Sri Suresh Reddy, learned Senior Counsel appearing for the appellants.

It is contended by Sri Suresh Reddy that in view of the judgment of the Supreme Court in ***L. Chandra Kumar v. Union of India***, any *lis* concerning a service dispute of a civil servant is liable to be entertained by a Division Bench of the High Court provided it is directed against an order passed by any Tribunal constituted under the Administrative Tribunals Act, 1985 when approached an appropriate order has either been passed or not passed by the said Tribunal. In the instant case, instead of filing any such Writ Petition against the order of the Andhra Pradesh Administrative Tribunal, the writ petitioners have straight away approached this Court and filed the above Writ Petition and hence, this Court ought not to have entertained the above Writ Petition in view of the principle enunciated by the Constitution Bench in ***L. Chandra Kumar's*** case (cited supra). Further, reliance has also been placed on ***Rajeev Kumar v. Hemraj Singh Chauhan***, wherein , in paragraph 13, it has been held as under:

“ 13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted.”

Hence, it is urged that the Writ Petition itself is liable to be thrown out.

In contrast, Sri P.V. Krishnaiah, learned counsel for the writ petitioners would urge that grossest injustice has been meted out to the direct recruit Deputy Superintendents of Police purposefully, so that their career progression can be marred. Without there being any justifiable reason or cause and in spite of clear enunciation of the legal principles with regard to fixation of seniority of directly recruited Deputy Superintendents of Police, purposefully and wantonly a wrong formula is adopted and thus, injustice is sought to be perpetrated. Now the Director General of Police, the Head of the Department has realized the grave error of judgment on the part of the State Government in preparing and publishing the erroneous seniority list and has taken up the matter with the State Government. The State Government is unwilling to remedy/rectify the error committed by it by reviewing promptly orders passed by them contained in G.O.Ms.No. 108, dated 23.06.2014. It is rather unfortunate that a genuine attempt made by the writ petitioners to secure justice at the hands of this Court is sought to be characterized by the appellants as a mis-adventure on their part.

We have given our consideration to the rival submissions. The principles enunciated by the Constitution Bench in **L. Chandra Kumar's** case (cited supra) made it abundantly clear that a service dispute is liable to be, at the first instance, adjudicated upon by the Administrative Tribunal constituted under the 1985 Act, so that in case the aggrieved party approaches the High Court against any such order passed by such a Tribunal, a Division Bench would be in a position to entertain the Writ Petition as part of the judicial review exercise under Article 226 of the Constitution. In that view of the matter, the Tribunal constituted under the 1985 Act is considered to be the Court of first instance. In the instant case, some of the writ petitioners have already approached the Tribunal raising the same *lis* relating to *inter se* seniority between directly-recruited Deputy Superintendents of Police and

promotee Deputy Superintendents of Police, but however, they also instituted the Writ Petition by merely adding a prayer that the matter might require investigation by CBI. We are at a loss to understand this part of the relief prayed for by directly-recruited Deputy Superintendents of Police. The CBI can, at best, investigate into any criminal act. It cannot have any jurisdiction of investigation into administrative issues undertaken by the State. Fixation of seniority of directly-recruited Deputy Superintendents of Police and promotee Deputy Superintendents of Police is a pure and simple administrative exercise, but at the same time, carried out by adopting fair, transparent and reasonable principles on the subject, inasmuch as rights of the parties could possibly be affected in the process with reference to their fundamental rights guaranteed under Articles 14 and 16 of the Constitution. But nonetheless, preparation of an *inter se* seniority list amongst the competing groups has neither any quasi-judicial trappings much less an adjudicatory element contained therein. As a matter of adherence to the principles of natural justice and with a view to provide a fair and equal opportunity to all competing candidates, a provisional seniority list is prepared at the first instance inviting comments/objections from the concerned and thereafter, the same will be considered objectively and an appropriate decision would be taken by way of publication of a final seniority list, but yet, such an exercise can hardly be called as a quasi-judicial exercise.

We are therefore, not in a position to appreciate the anxiety of the directly-recruited Deputy Superintendents of Police of the State in seeking an investigation by the CBI into an administrative exercise carried out by the State in consultation with its Director General of Police. Perhaps, the criticism mounted by the appellants that the prayer in that regard in the Writ Petition is a mere camouflage to maintain the Writ Petition appears to be not without any merit.

In view of the principle enunciated by the Supreme Court in ***L. Chandra Kumar's*** case followed up by the principle laid down in ***Rajeev Kumar's*** case, we consider the Writ Petition instituted by the writ petitioners while simultaneously maintaining the Original Applications before the Tribunal, is inappropriate indulgence in jurisdiction of this Court and we consider that the Writ Petition is not maintainable and accordingly, we dismiss the Writ Petition itself allowing this Writ Appeal. No costs.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

ANIS, J

29th October 2015

Note: L.R. Copy to be marked

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

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Writ Appeal (SR) No.160368 of 2015

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The extraordinary measure of annexing a note to our judgment has arisen in the following circumstances:

On 29.10.2015, the above matter has been listed as first item before us. The roster assigned to this Bench comprised of several subject matters such as Writ Petitions directed against the orders and judgments of the Tribunals, Writ Appeals

and Criminal Appeals. For quite some time past, Criminal Appellate Bench could not be constituted to exclusively deal with criminal appeals, obviously for want of adequate number of Judges in the Court. Hence, the criminal appeals were pending from 2010 onwards. In those circumstances, this Bench has exclusively set apart Wednesdays and Thursdays for hearing criminal appeals and consequently, cases of other subject matters are avoided from being taken upon those days. But, however, the above matter was specifically listed duly informing the counsel on both sides, in as much as the above matter has undergone adjournments on 08.09.2015, 14.09.2015, 01.10.2015, 06.10.2015, 13.10.2015 and 26.10.2015. Since the appellants are not parties to the writ petition, they filed petition seeking leave to appeal and consequently, the matter was getting listed amongst interlocutory matters and hence, could not reach in the normal course of hearing matters. However, whenever any counsel made a mention about the urgency, such matters are taken up, out of turn in the afternoon session. Somehow hearing of this matter could not be completed in any of those sessions mentioned supra. That was the reason why we have posted the above matter on 29.10.2015. Further, 5 days prior thereto one of us (NRR,J) could not take up hearing of matters in the afternoon session in view of participation in the ongoing interviews for recruitment of District Judges.

In spite of the aforementioned matter being listed as first item, a request is made on behalf of Sri P.V. Krishnaiah, learned counsel for the writ petitioners to pass over the matter, which request we declined as that would cause interference to the scheduled hearing of criminal appeals. Hence, we declined the request. But, however, the learned counsel who made the request could not proceed further in the matter by advancing any arguments. Hence, we completed the hearing of Sri P.Suresh Reddy, learned senior counsel for the leave petitioners/appellants and the learned Government Pleader. We dealt with the arguments, in piecemeal advanced by Sri P.V. Krishnaiah on the earlier occasions and dictated the order/judgment in the leave petition, writ appeal and the miscellaneous petitions moved therein.

Quite some time thereafter while the hearing of some other case was going on, our attention was drawn to a sudden and loud shouting in the Court corridor outside. Soon thereafter Sri P.V.Krishnaiah, learned counsel entered the court hall

and waited patiently for a while for us to complete the hearing of remaining miscellaneous matters and then made a request that he may be heard in the matter. By then both the learned Government Pleader as well as Sri P.Suresh Reddy have left the court hall. We conceded to the request of Sri P.V.Krishnaiah, to submit as to how our view is not correct, but, however we required him to inform and secure the presence of opposite parties. Accordingly, he could inform both the learned Government Pleader and Sri P.Suresh Reddy and thereafter, we started hearing Sri P.V.Krishnaiah. We will now advert to the submissions made by Sri P.V.Krishnaiah.

A Full Bench of this Court had occasion to deal with the question as to whether Hyderabad City police could be organised into a separate unit of appointment or not. Against the Full Bench judgment the matter was carried to the Supreme Court and by its judgment dated 09.10.2009 the Supreme Court has reversed the opinion expressed by the Full Bench of this High Court. Contra to the principles enunciated by the Supreme Court, a provisional seniority list of promotee Deputy Superintendents of Police was prepared on 20.05.2014 and objections were filed in respect thereof bringing out as to how the said list runs contra to the legal principles which have emerged on the subject. Without any regard to the objections raised, the State Government passed orders through their G.O.Ms.No.108, Home Department dated 23.06.2014 fixing the *inter se* seniority of promotee and direct recruit Deputy Superintendents of Police. That was challenged before the State Administrative Tribunal, but no orders to suspend the operation of such a seniority list could be secured. however, the direct recruit Deputy Superintendents of Police have carefully analysed the seniority assigned to the promotee officers and then, they have realised that some of the promotee officers who died earlier were now shown in the list appended to G.O.Ms.No.108 dated 23.06.2014 assigned with notional dates of promotion with effect from dates subsequent to their death. For instance, one Sri Sataiah expired during December 1990, while working as Assistant Commissioner of Police of city police (equivalent rank of Deputy Superintendent of Police) whereas in the list appended to G.O.Ms.No.108 he was shown to have been assigned notional date of promotion as Additional Superintendent of Police in the year 1994. There are several such cases, therefore, the Deputy Superintendents of Police have realised that the exercise carried out by the State Government culminated G.O.Ms.No.108 dated 23.06.2014 was totally illegal and it was obviously prepared for extraneous reasons. It was also pointed out that a seniority list which is prepared in the year 1987, which was upheld by the

Andhra Pradesh Administrative Tribunal, this Court and also the Supreme Court, to a certain extent stood revised now by the list appended to G.O.Ms.No.108 dated 23.06.2014. Hence, the entire exercise carried out by the State Government was an illegal exercise and a deliberately carried out one for purposes of preventing the progression of the directly recruit Deputy Superintendents of Police in the cadre. Therefore, an enquiry Committee is liable to be constituted by the Chief Secretary to the Government and in the event, the said Committee found out grossest abuse and misuse of power on the part of, those who are responsible for the preparation of such a list, their conduct also requires to be investigated for purpose of prosecuting them.

At the end of nearly 2 hours of hearing, we had extended the courtesy of permitting Sri P.V.Krishnaiah, learned counsel for the writ petitioners to peruse the judgment, which we have dictated a little earlier thereto touching upon the maintainability of the writ petition instituted in this Court and hence we have not gone into the relative merits of the matter at all. Sri P.V.Krishnaiah sought for further time to make further investigation and submissions after looking into our uncorrected copy of the judgment. We assured the learned counsel that we will not be signing the original copy of the judgment till Wednesday i.e., 04.11.2015 and he is free to make any further submission and demonstrate that the view taken by us is erroneous. Sri P.V.Krishnaiah appeared on 04.11.2015 and informed us that he had gone through the judgment dictated by us in the open Court on 29.10.2015 and wants to make his further submissions next day. We conceded to his request once again and did not sign the original judgment on 04.11.2015.

However, on 05.11.2015 a request is made by a colleague of Sri P.V.Krishnaiah that the matter has not been listed, to enable Sri P.V.Krishnaiah to make his submissions and hence the case be ordered to be listed. At that stage, we have pointed out to the learned junior counsel that a case, which is already decided by us, cannot get reposted in the cause list, unless a Review Petition is moved therein, but, however, we have extended a concession to Sri P.V.Krishnaiah to make submissions as to how the view taken by us in the matter is erroneous and unsustainable. But, we have not conceded to the request that the case should reappear in the cause list.

We understand it has caused some anguish to Sri P.V.Krishnaiah. He seems to have approached the Secretary of one of us (NRRJ) to ascertain from him as to

why the matter is not getting listed in the cause list. However, when we have assembled in the afternoon session, 5 minutes behind schedule at 02.20 PM (as a meeting, one of us (NRRJ), with regard to administrative subject matter, was having with 2 other brother Judges could not be completed, but prolonged for few minutes more than the lunch recess time), Sri P.V.Krishnaiah appeared in a very agitated mood and made a statement that when the matter is not appearing in the cause list, how can the Bench take up the hearing of the matter. Then we have pointed out to him that we have already decided the main matter, but only with a view to show courtesy to a counsel, we have conceded to his request and hence, assured him that we are willing to correct ourselves, if necessary by reviewing our order *suo motto* if we have committed any error in holding that the writ petition is not maintainable. Because of our persuasion, Sri P.V.Krishnaiah then went on with his additional submissions in the afternoon session on 05.11.2015. He would urge as under:

1. The main relief sought for in the writ petition was to constitute a Committee for fixing the accountability on the part of those officers, who have erroneously prepared the list appended to G.O.Ms.No.108 dated 23.06.2014 and hence, the writ petition is maintainable.

We feel that so far as fixing accountability on the wrong doing officers is concerned, the same is not beyond the jurisdiction exercisable by the Andhra Pradesh Administrative Tribunal in any *lis* brought before it. Hence, in the guise of seeking fixation of accountability, no service dispute of a Government servant can be brought before the High Court at the first instance contra to the principle enunciated by the Supreme Court in **L. Chandra Kumar Vs. Union of India**.

2. If any party is aggrieved by an interlocutory order passed by a learned single Judge in a writ petition, the course open to such a party is to seek impleadment and then seek modification/vacation of any such interim order, but the party cannot prefer a writ appeal.

If a writ petition is otherwise maintainable, the question as to the determination of proper and necessary parties to any such *lis* will have to be undertaken by the Court at first instance, but not, when the writ petition itself is not maintainable.

3. The learned Single Judge has only passed an innocuous order by directing the State Government to take follow up action pursuant to the

recommendation made by the Director General of Police suggesting wholesale modification of the seniority list appended to G.O.Ms.No.108 dated 23.06.2014, hence, contends Sri P.V.Krishnaiah that the present case is not a fit case for grant of leave to appeal.

When once a learned single Judge, as held by the Supreme Court in **L. Chandra Kumar's case (Supra 1)**, is not supposed to entertain any such writ petition, question of issuing any interlocutory order however innocuous it might appear is unsustainable.

4. Sri P.V.Krishnaiah, learned counsel, would urge that the principle enunciated in **L. Chandra Kumar's case (Supra 1)** cannot be construed as a kind of prohibition against entertaining any writ petition involving a service dispute and there can be variety of circumstances in which, the Supreme Court itself has recognised the power of judicial review of the High Court and allowed it to entertain the writ petitions and he would submit that in Ranga Rajan's case, the Supreme Court has reversed the view expressed by the Madras High court that the writ petition is not maintainable before it.

Where a whole class of employees, but not necessarily one or several of them are adversely affected by any policy decision of the State Government, the validity of such a policy decision can be considered in a writ petition instituted at the first instance itself. Therefore, the principle thus recognised by the Supreme Court in this regard is not attracted to the present case on hand.

5. Whether a writ appeal against an interim order is maintainable, is required to be examined, is the next contention as no decision has been rendered by the learned Single Judge affecting anyone and also no final order is passed by the learned Single Judge deciding finally the writ petition nor was any final interlocutory order was passed by him and hence, no appeal there against would lie to this Bench.

The interlocutory order passed by the learned Single Judge, in a writ petition which is prima facie not maintainable, if it is capable of affecting the rights of other parties, then an appeal against such an order becomes maintainable. In the instant case, the learned single judge granted a direction to take action in the matter as

suggested by the Director General of Police. If the said order is carried out by the State Government even before any proper adjudication is carried out by the Andhra Pradesh Administrative Tribunal the *lis* instituted before it, and the interest of promotee Deputy Superintendents of Police would get adversely affected. Hence, we are of the opinion that an appeal against any such order is maintainable.

6. Whether a Letters Patent Appeal is maintainable? When Writ Proceedings Rules do not provide for an intra-court appeal, whether LPA is maintainable? Writ proceedings rules, is a special law and hence, LPA is not maintainable against an order passed in a writ petition, either interim or final.

Clause 15 of Letters Patent granted by her Majesty in Council provides for an intra-court appeal. "Right to prefer an appeal" in a judicial proceeding can only be granted by a statutory exercise. Writ Proceedings Rules are procedural rules and they do not create any substantive right of appeal to the litigants. Hence, LPA is maintainable, by virtue of the provisions contained in Articles 395, 372 and Clause (1) of Article 13 when read conjointly together.

This question has been elaborately answered by the Supreme Court in **Shah Babulal Khimji Vs. Jayaben D. Kania**

7. Even if leave as prayed for to prefer an appeal is to be granted, the question of granting relief to the appellants should not have arisen.

When once leave is granted to prefer an appeal, the Court would examine the merits of the appeal and upon examination of such merits, we preferred to follow the principles enunciated by the Supreme Court in **L. Chandra Kumar's case (Supra 1)** and **Rajeev Kumar Vs. Hemraj Singh Chauhan and others** in holding that the writ petition is not maintainable. Hence, grant of relief in the writ appeal is not beyond the scope and jurisdiction of this Court.

8. The relief prayed for in the writ petition is not maintainable before the Andhra Pradesh Administrative Tribunal in as much as the relief prayed for in the writ petition is more in the nature of "public interest litigation".

If the writ petition is one which is instituted in "Public Interest" then the matter is required to be examined not by a Single Judge, but by a Division Bench. Further, the proceedings will have to satisfy the guidelines for instituting Public Interest Litigation.

Seeking investigation by CBI by describing the exercise indulged in by the State Government as “Seniority Scam” does not make the writ petition entertainable, so long as elements of criminal culpability are not present in any such exercise.

9. Even if the relief as prayed for in the writ petition cannot be granted, there was discretion available to the Court to mould the relief to be granted.

When a *lis* is otherwise maintainable and entertainable by the High Court then the question of granting appropriate relief by moulding suitably the relief prayed for would arise, but not otherwise.

10. No ground is raised in the memorandum of appeal that the writ petition is not maintainable?

The contention canvassed before us by Sri P.Suresh Reddy, learned senior counsel on behalf of the appellants is wholly about non-maintainability of the writ petition. Therefore, the issue was squarely answered by us in our judgment.

11. Allowing the writ appeal without hearing the counsel for the writ petitioners is a wrong procedure adopted by the Court and the writ appeal should have been listed for hearing separately after granting leave.

We have, at request of the parties as represented by their learned counsel, took up the matter on several occasions in the past, the dates have already been adverted to at the very beginning of this note. Therefore, question of listing up separately the matter once again for hearing would not arise and taking up the writ appeal for consideration by us is not against any judicial norms of hearing. We have posted the matter as first item on 29.10.2015. If the learned counsel for the writ petitioners was not present to advance arguments on that day, we are legitimately in belief that is satisfied with his submissions made earlier that the writ petition is maintainable and the writ appeal deserves to be dismissed. Hence, we have considered the said question. The Court is not at fault we believe in deciding the case on 29.10.2015.

12. If the Court felt any urgency in the matter then it could have merely granted an interim order in the appeal and kept the writ appeal pending instead of disposing it of.

When we have arrived at a conclusion that the writ petition instituted before this Court entertained by learned Single Judge is not maintainable, no meaningful purpose would be served by granting interim order to that effect and then keep the writ appeal pending.

13. Certain miscellaneous petitions are filed by the writ petitioners in the writ appeal and they are liable to be heard.

There is one miscellaneous petition (SR) No.189707 of 2015 moved by the writ petitioners for prosecuting the appellants for the contention canvassed by them that the writ petitioners have misused and abused the process of this Court. The aforesaid miscellaneous petition was also decided by us on 29.10.2015.

We should also advert that during the course of submissions, Sri P.V.Krishnaiah, learned counsel for the writ petitioners would make a statement that the writ petitioners, who are young and dynamic Sub Divisional police officers, have gathered lot of material to be used by them. If the young and dynamic police officers have gathered any material against us, we have no hesitation whatsoever for them to put it to any lawful use. We are not afraid of attempts made by any parties in gathering any material, which might become available for them against us.

If on the other hand, young police officers have gathered material against their Additional Director General of Police/DGP/Home Secretary of the Government, it is for them to make an effective use of the same without in any manner breaching the code of discipline by which they are bound.

During the course of hearing, Sri P.V.Krishnaiah, the learned counsel for the writ petitioners has also referred to a round of gossip that was generated at the bar, quite sometime in the past, when an order was passed by a Bench comprising of the Hon'ble the Acting Chief Justice and one of us (NRRJ). We have nothing to do with such gossip mill going about doing such work. Such unprincipled and unruly elements, who have no respect for law and institutions will continue to indulge in such work and we are not worried at all about wastage of their talent in such useless pursuits. However, if the statement made by Sri P.V.Krishnaiah, learned counsel for the writ petitioners, was aimed at inducing fear in our mind that the gossip mill once again would be pressed into service with regard to the present judgment rendered

by us on 29.10.2015, we can only feel pity and sorry for such men. But we are undeterred by such factors when we perform our duties.

We have never hesitated to hear any counsel for any length of time provided the merits of a matter are debated. However tolerant we might be for the 'light and sound exercise' inside the court hall, indulged in once in a while, but, we record our disapproval of mere 'jarring sounds' produced without much light.

Registry to note that, since we have not found the view taken by us in the matter any erroneous, we have proceeded to affix our signature on the original judgment. For the aforementioned reasons, this part of the explanatory note will be treated as an annexure to our judgment rendered on 29.10.2015 in W.A(SR).No.160368 of 2015.

NOOTY RAMAMOHANA RAO, J

ANIS, J

12.11.2015

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