

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 12.11.2018

PRONOUNCED ON :: 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.33261 of 2012

N. Nagarajan

..Petitioner

Vs.

1. The Director,
Elementary Education Department,
Secretariat, St. Fort,
Chennai - 9.
2. The Accountant Officer,
Accountant General
(Accounts & Entitlements),
Chennai - 18.
3. The District Elementary Educational
Officer,
Krishnagiri District,
Krishnagiri.
4. The Additional Assistant Elementary
Educational Officer,
Shoolagiri.
5. The Block Development Officer,
Shoolagiri Panchayat Union,
Krishnagiri District.

..Respondents

Prayer:

Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to Pen 16/II/Pf.210/09/10 dated - 08.2009 signed on 14.08.2009 passed by the 2nd respondent herein and quash the same and further direct the respondents herein to sanction the pension and other retirement benefits to the petitioner for his 11 years 41 days of qualifying service and interest for the belated payment of the retirement benefits by considering the facts and circumstances of the case.

For Respondents :: Mr.A. Raja Perumal,
Addl. Govt. Pleader for
R1, R3, R4 & R5
Mrs. Hema Muralikrishnan for R2

The writ petition has been filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to Pen 16/II/Pf.210/09/10 dated - 08-2009 signed on 14.08.2009 passed by the 2nd respondent herein and quash the same and further direct the respondents herein to sanction the pension and other retirement benefits to the petitioner.

in service from 20.01.1969 to 12.03.1980, he made a representation seeking pensionary benefits. That representation was rejected by the 2nd respondent namely, the Accountant Officer, Accountant General (Accounts & Entitlements), Chennai - 18. Assailing the said order, he filed the present writ petition.

3. Heard Mr.J. Lakshmi Narayanan, learned counsel for the petitioner, Mr.A. Raja Perumal, learned Additional Government Pleader for respondents 1, 3, 4 & 5 and Mrs. Hema Muralikrishnan, learned counsel for the 2nd respondent.

4. It is the stand of the learned counsel for the 2nd respondent that the petitioner having resigned from service, is not entitled for any pensionary benefits.

5. This stand of the learned counsel for the 2nd respondent is countered by the learned counsel for the petitioner, who contended that the petitioner had been in employment for a period of 11 years and above and had crossed the qualifying period of 10 years and consequently, even if he had resigned, he is entitled for pension. Stress was particularly placed on the fact that the petitioner had to resign owing to his illness. In this connection, learned counsel for the petitioner, placed reliance on the following earlier judgments of this Court:

(I) In W.P. No. 26540 of 2011, a learned Single Judge of this Court was concerned with a similar relief sought by an employee, who joined service as Assistant Teacher in a Primary School, Tiruchengode Taluk. He was employed from 04.08.1970 till 24.09.1981, for a period of 11 years, 1 month and 21 days. The said employee tendered his resignation on 13.07.1986. It was accepted and he was relieved from service on 08.02.1996. He sent a representation on 10.09.2004 seeking pensionary benefits. A reply was given that he was not eligible for pensionary benefits. Rule 23 of Tamil Nadu Pension Rules, 1978 (in short, 'the Rules') was referred. In the said order, the learned Single Judge observed that on a number of earlier occasions, Rule 23 of the Rules had come up for consideration before this Court and beneficial interpretation had been given. The Court had placed reliance on earlier order in W.P. No. 5170 of 2011 dated 15.12.2011 wherein pension had been granted under similar circumstances. Reliance was also placed on the ratio laid down in the judgment of the Division Bench of this Court in D. Vijayarangan V. Secretary, Sales Tax Appellate Tribunal (Addl. Bench), Madurai reported in 2008 (6) CTC 700 wherein pension was granted on beneficial interpretation of Rule 23 of the Rules.

In the said Division Bench judgment, it was found that, as a fact, it had been determined that the petitioner in that case, had proceeded on leave because of mental illness and had submitted resignation letter on 02.08.1988 and there had been specific instructions to settle the dues payable to the Government and thereafter, the resignation of the petitioner was accepted. It was observed that the petitioner was allowed to resign. The Division Bench, thereafter, directed that the retirement benefits must be granted. This judgment of the Division Bench was relied on by the learned Single Judge and it was observed that grant of pensionary benefits had been liberally interpreted. The writ petition was allowed by order dated 11.04.2018 and a direction was given to pay the pensionary benefits.

(II) In W.P. No. 26013/2015, a learned Single Judge was again called upon to examine the issue of grant of pensionary benefits with respect to Higher Grade Teacher, who served from 11.04.1946 till 18.01.1965. The learned Single Judge, again, stated that Rule 23 of the Rules should be liberally interpreted and it was declared that the petitioner therein was entitled to be paid pension with effect from 3 years prior to the date of filing of the writ petition, if he was otherwise eligible under the scheme of Pension Rules by treating resignation as not one of forfeiture of service.

6. Learned counsel for the petitioner placed great reliance on the above two rulings and stated that in the instant case also, the petitioner had applied for medical leave, which had also been accepted by the respondents by their own document and consequently, stated that since the petitioner was not in a position to continue in employment, there cannot be any forfeiture of service, as provided under Rule 23 of the said Rules.

7. This stand of the learned counsel for the petitioner was very seriously disputed by the learned counsel appearing on behalf of the 2nd respondent. Mrs.Hema Muralikrishnan, learned counsel for the 2nd respondent placed much reliance on the judgment of the Honourable Supreme Court in C. Jacob V. Director of Geology and Mining and Another reported in (2008) 10 SCC 115. In the said judgment, the appellant therein had joined service as Drill Helper in June, 1967. His services were terminated in the year 1982, in pursuance of a show cause notice dated 08.07.1982. After 18 years, he made a representation that he should be taken back into service. As the enclosure to the said representation was incomplete, the petitioner was directed to enclose complete particulars. However, the petitioner approached the Tamil Nadu Administrative Tribunal by filing an

original application seeking a direction to dispose of his representation. The representation of the petitioner came to be rejected by the respondents by order dated 09.04.2002. Challenging the said order and seeking a direction to the respondents to grant service benefits to him within a time frame, an original application was filed by the petitioner before the Tamil Nadu Administrative Tribunal. The said application was thereafter transferred to Madras High Court and by order dated 13.04.2006, a learned Single Judge of this Court observed that the respondents had not followed the mandatory requirements of Tamil Nadu Civil Services (Discipline and Appeal) Rules by issuing a charge memo and conducting an enquiry for unauthorised absence and the writ petition came to be allowed. The order of the learned Single Judge was challenged by the respondents before the Division Bench. The Division Bench allowed the writ appeal observing that the petitioner had not completed 20 years and consequently, did not qualify to receive pension. That judgment of the Division Bench was appealed to the Honourable Supreme Court.

8. The Honourable Supreme Court, in the judgment, the citation of which was mentioned above, examined the issue on two grounds, namely (i) the modus of submitting representation after a considerable delay and

(ii) the assumption that 10 years of service entitles a Government Servant to pension under the Pension Rules.

9. With respect to the first aspect of representation being given, after considerable delay, the Honourable Apex Court observed as follows:

"13. Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages."

It was further observed in paragraph No.16 as follows:

"16. The petitioner neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show-cause notice dated 8-7-1982 and failed to produce the second or subsequent sheets of the said show-cause notice in spite of being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges...."

Even in the present case, the petitioner has not given any details as to what actually was the mental or physical illness from which he suffered and had also not produced the medical certificates relating to the same. He had last worked in the year 1980 and had given representations on 21.06.2012 and thereafter filed the writ petition. The representation was given after more than 30 years. I am not able to accept the contention that the petitioner was continuously suffering from schizophrenia and that the representations given by him, after 30 years, should be favourably considered, in the absence of any material provided by the petitioner.

10. The second aspect, ie. the assumption that 10 years of service entitles a Government Servant to pension under the Pension Rules had been dealt with by the Supreme Court in the same judgment in paragraph Nos.18,19 & 20 to 24, which are extracted as hereunder:

"18. The appellant relied on Rule 43(2) of the Tamil Nadu Pension Rules, 1978 ("the TNP Rules", for short) to contend that on completion of 10 years of service, a government servant is entitled to pension. Relevant portion of the said Rule is extracted below:

"43. (2) In the case of a government servant, retiring in accordance with the provisions of these Rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below namely:"

(emphasis supplied)

As similar contention is frequently raised under the corresponding Rule 49(2)(b) of the CCS Pension Rules ("CCSP Rules", for short), we will for convenience refer to the corresponding provisions of the CSSP Rules also.

19. Rule 43(2) relied on by the petitioner falls under Chapter VI of the TNP Rules [corresponding to Rule 49(2) (b) in Chapter VII of the CCSP Rules] dealing with "regulation of amount of pension". The said Rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are:

	Classes of Pension (vide Chapter V of the Pension Rules)	CCSP Rules	TNP Rules
(i)	Superannuation pension	Rule 35	Rule 32
(ii)	Retiring pension	Rule 36	Rule 33
(iii)	Pension on absorption in or under a corporation, company or body owned/controlle d by the State/Central Government	Rule 37 Rule 37-A	Rule 34
(iv)	Invalid pension	Rule 38	Rule 36
(v)	Compensation pension payable on discharge owing to abolition of the post	Rule 39	Rule 38
(vi)	Compulsory retirement pension	Rule 40	Rule 39
(vii)	Compassionate allowance to government servants who forfeit their pension on being dismissed or removed	Rule 41	Rule 40

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.

21. Admittedly, the petitioner was not "superannuated"; nor was he absorbed in any corporation/company/body owned by the State/Central Government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.

22. Rule 33 of the TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of the TNP Rules provides that a government servant, who under Fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension (corresponding Rule 36 of the CCSP Rules which provides that a retiring pension shall be granted to a government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a

minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension.

23. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules] refers to "not less than 10 years' service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to "entitlement" of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring government servant is entitled to pension under Chapter V of the Pension Rules. The said Rule regulates the "amount" of pension not only in case of retiring pension, but in case of all classes of pension.

24. Under Chapter V, in certain situations, a government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36 and 38 of the TNP Rules [Rules 35, 38 and 39 of the CCSP Rules] do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules] refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules], as noticed earlier, comes into play only when the government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of the TNP Rules [or Rule 49(2)(b) of the CCSP Rules] dealing with the quantum of pension refers to a government servant

retiring in accordance with the said Rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the petitioner is not entitled to pension.

11. A categorical finding has been given that Rule 43(2) of the Tamil Nadu Pension Rules deals with quantum of pension and would not apply to persons, who have forfeited service under Rule 23 of the Rules. In this connection, it is relevant to extract Rule 23 of the Rules, which is as follows:

"23. Forfeiture of service on resignation - (1)
Resignation from a service or post entails forfeiture of past service:

Provided that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under Government where service qualifies."

The above Rule clearly provides that resignation from service entails forfeiture of past service. The only exception is if it had been submitted to take up with proper permission, another appointment under the Government.

12. Rule 43(2) of the Rules, which had been discussed in the judgment cited above determines the quantum of pension where a Government Servant retires in accordance with the provisions of these Rules after completing qualifying service of not less than 10 years. Entitlement of pension is governed under Chapter V of the Tamil Nadu Pension Rules. Chapter V relates to classes of pension and the conditions governing the grant of pension. This would include Superannuation Pension, Retiring Pension, Pension on absorption in or under a Corporation, Company or Body, Invalid Pension, Compensation Pension, Compulsory Retirement Pension and Compassionate allowance to Government Servants who forfeit their pension on being dismissed or removed. To get invalid pension, a Government Servant must be declared by proper medical authority to be permanently incapacitated for further service. This involves examination by a Medical Board and also by a Civil Surgeon or District Medical Officer and subject to the medical certificates and the medical opinion being examined in accordance with the Rules. As far as Compensation Pension is concerned, when a permanent post is abolished, then pension is granted as compensation. Finally, pension can be granted as compulsory retirement pension where a Government Servant, as a penalty, is retired compulsorily, in which event, two-thirds of pension amount admissible is granted.

13. The aforecited judgment of the Honourable Supreme Court overrides the judgment of the learned Single Judge of this Court.

14. In Union of India V. Rakesh Kumar reported in (2001) 4 SCC 309, the Supreme Court held that an erroneous interpretation of the Rules by the authorities in grant of pension would not mean that the same mistake should be perpetuated by direction of the Court. In paragraph No.21, it was observed and then held as follows:

"21. Learned counsel for the respondents submitted that on the basis of G.O., number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions."

15. In Union of India V. Braj Nandan Singh reported in (2005) 8 SCC 325, in a case relating to claim for pension, it was held as follows in paragraph No.6:

"6. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent."

16. In Ghanshyam Das Rehlan V. State of Haryana reported in (2009) 14 SCC 506, it had been held as follows:

"26. In our view, Rule 4.19(a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression 'resignation from public service' will have to be read disjunctively from 'dismissal or removal from it'. The expression 'resignation from public service' will not be qualified by the subsequent references relating to anti-national activities. On the other hand, the expression 'dismissal or removal from it' will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances."

17. In State of Madhya Pradesh V. Hitkishore Goswami reported in (2015) 11 SCC 199, it was held as follows:

"16. In our considered opinion, the effect of tendering the resignation by the respondent - may be for any reason was that the relationship between the parties insofar as that particular employment was concerned got severed for all purposes leaving no benefit to remain in respondent's favour. It had no connection with respondent's subsequent employment which began from "03.01.1966".

17. Indeed, in order to claim continuity in the service for claiming any benefit arising therefrom, it was necessary for the respondent to have shown any specific rule or condition recognizing such right in his favour. The respondent, however, was not able to show any such rule or/and condition in his favour.

18. It is a trite law that a right to claim pension is governed by the statute. An employee has, therefore, no right to claim any benefit in relation to pension dehors the statute."

18. It is thus clear that resignation from service entails forfeiture of past service and disqualification so far as payment of pension is concerned. The relationship between the parties insofar as that particular employment was concerned gets severed for all purposes leaving no benefit in the employee's favour. An employee has, therefore, no right to claim any benefit in relation to pension dehors the statute.

19. In the present case, on facts, the writ petitions wherein the learned Single Judge was examining the issues have to be distinguished. Here, the date of actual resignation is not given by the petitioner. He simply abandoned his service. Thereafter, it was found that he had actually given a resignation letter. This fact was not disclosed in the affidavit. He pleads innocence and ignorance and seeks indulgence from this Court. But, the onus is on him to prove continuous medical illness incapacitating him from continuing in service. That onus has not been discharged by him. The Supreme Court, in the aforesaid judgment, has categorically stated that Rule 43(2) of the Rules determines only the quantum of pension to be calculated and does not prescribe the conditions for eligibility. Consequently, the contention that merely because the petitioner completed 10 years and therefore, should be granted pension, after he resigned from service, cannot be accepted.

20. In view of the binding precedents of the Supreme Court, I am not able to convince myself to grant relief in the present writ petition. Hence, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Director,
Elementary Education Department,
Secretariat, St. Fort,
Chennai - 9.

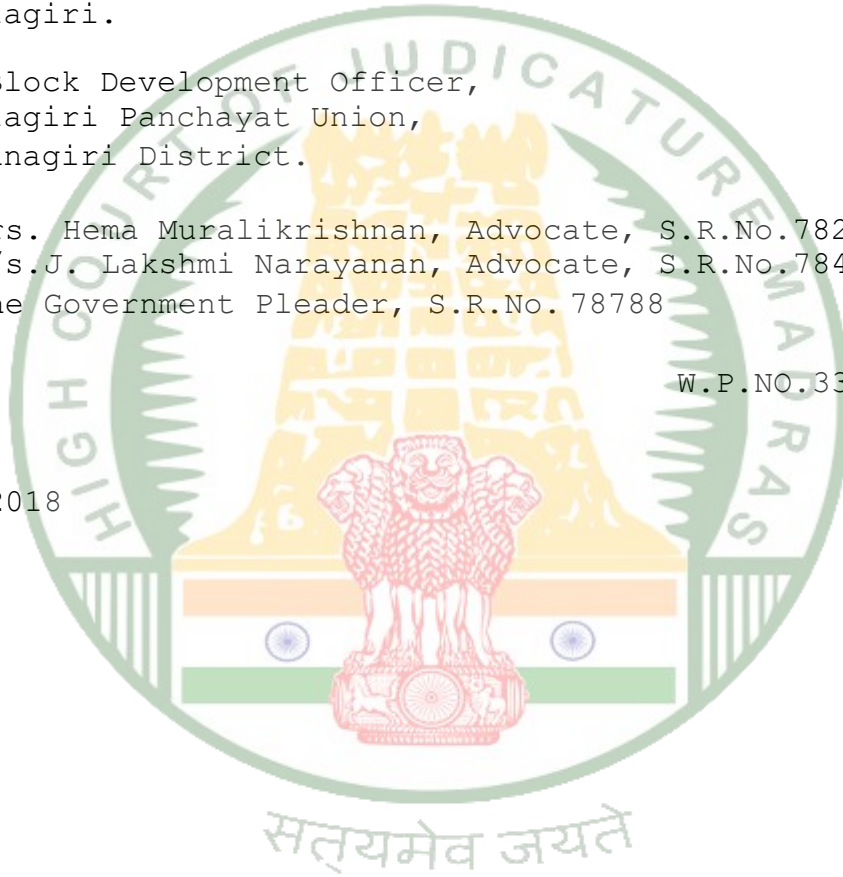
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Krishnagiri District.

+1cc to Mrs. Hema Muralikrishnan, Advocate, S.R.No.78267
+1cc to M/s.J. Lakshmi Narayanan, Advocate, S.R.No.78459
+1cc to the Government Pleader, S.R.No.78788

W.P.NO.33261 of 2012

SAI (Co)
CS/03/12/2018



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