

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6698/2019

Madan s/o Lahanu Khadse,
 aged about 56 years, Occupation
 At present Nil, resident of Plot No.142,
 Kukde Layout, Rameshwari Road, Nagpur

.....**PETITIONER**

...V E R S U S...

1. The State of Maharashtra,
 through its Secretary,
 Department of Tribal
 Development, Mantralaya,
 Mumbai-32.

2. The Commissioner,
 Tribal Development (M.S.)
 Old Agra Road, Nasik.

3. The Additional Commissioner,
 Tribal Development, Giripeth, Nagpur.

.....**RESPONDENTS**

 Mr. A. C. Dharmadhikari, Advocate for petitioner.

Mr. N. S. Rao, A.G.P. for respondent nos. 1, 2 and 3.

CORAM:- ROHIT B. DEO & ANIL L. ANSARE, JJ.

DATED :- 23.08.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner, who was working as Head Master in the Government Secondary Ashram School, Pandhurna, Tq. Ashti, Dist. Wardha, is aggrieved by the judgment and order dated 18.07.2019 passed by the Maharashtra Administrative Tribunal, in Original Application No.625/2018. The Maharashtra Administrative Tribunal has been pleased to dismiss the original application filed by the petitioner challenging the order dated 17.02.2017, passed by the disciplinary authority dismissing the petitioner from service.

3. Mr. Dharmadhikari, learned counsel for the petitioner, restricted his argument to the quantum of punishment, which according to him, is disproportionate to the charges proved against the petitioner.

4. We will, therefore, refer to the arguments, the evidence led before the enquiry officer, the documents placed before us and to the impugned judgment, to the extent necessary to decide whether the punishment imposed upon the petitioner is disproportionate to the fault attributed to him.

5. The petitioner faced departmental inquiry for the following three charges.

1) *That Shri M. L. Khadse, while working as Headmaster, Secondary (Suspended), Government Secondary Ashram School, Pandhurna Tah. Ashti, Distt. Wardha failed to take suitable action by not taking into consideration the seriousness of the matter of sexual assault on Ku. R (identity concealed), the girl student studying in 3rd standard in the Ashram school on 18.08.2015 even after getting information in that regard on 19.08.2015 and also failed to intimate the Police Station instantly for registration of an offence and also failed to convey the information of the incident to the Superior office and thereby failed to discharge the duties and responsibilities and hence liable for punishment.*

2) That Shri M. L. Khadse, while working as Headmaster, Secondary (Suspended), Government Secondary Ashram School, Pandhurna Tah. Ashti, Distt. Wardha in the case of sexual assault on, Ku. R (identity concealed), girl student studying in 3rd standard on 18.05.2015, allowed accused Shri Raju Landge to stay in the premises of the government Ashram School for last two to three years though he was not the government servant. The unauthorized residence of the accused is responsible for occurrence of the said incident. Thus you failed to discharge duties and responsibilities of your post and hence liable for punishment.

3. That the Headmaster being the head of the School, the whole responsibility of the School lies upon him and when this fact was well within your knowledge, you failed to keep the bath room, wash room, tank of drinking water and school premises clean and also didn't provide attention towards the meal of the school students and the students were provided with the low quality food. From this it appears that you failed to keep control on the subordinate staff and thereby you acted irresponsibly, negligently and carelessly

from the administrative point of view and thus failed to discharge duties and responsibilities of your post and thus liable for punishment.

6. The enquiry officer, after conducting inquiry, has rendered a finding that the charge no.1 is proved, charge no.2 is partly proved (charge to the extent that the petitioner allowed Raju Landge to unauthorisedly stay in the premises of Ashram School, has not been proved) and charge no.3 is not proved.

7. The incident that led to framing aforesaid charges against the petitioner, as disclosed from the inquiry report, is as follows.

The petitioner was working as Head Master in the Government Secondary Ashram School with effect from 02.09.2013. On 18.08.2015, he had been to Arvi for some official work. He returned back to the Headquarter at 09.00 p.m. On that day, Mrs. Vaishali Dighore, lady superintendent of girls hostel received an information that two girl students

namely Ku. R and Ku. S (identity concealed), hurled vulgar abuses by taking name of Raju Landge, an employee deployed by the contractor as watchman of the newly constructed hostel for Ashram School. Initially, Mrs. Dighore had given information to Mr. M. P. Rangari, the male superintendent of boys hostel. On 19.08.2015, Mrs. Dighore and Mr. Rangari, approached the petitioner and informed him of the abuses hurled by the girl students. Thereupon, the petitioner instructed Mrs. Dighore to enquire and submit written report. However, Mrs. Dighore did not submit the report. On the same day, i.e. on 19.08.2015, the petitioner was required to go to Nagpur as his wife suffered cardiac arrest. On 21.08.2015, there were whispers in the town of sexual harassment suffered by Ku. R. Mrs. Dighore then called the Petitioner on phone and asked whether to take Ku. R to hospital to which, the petitioner said, 'No'. The petitioner came back to the headquarter on 31.08.2015. He made an inquiry of the incident with the teachers. On 01.09.2015, the petitioner, after interacting with the teachers and other employees, passed a resolution that no

incident of sexual abuse occurred against Ku. R. However, prior thereto, the parents of Ku. R. had lodged report with Police Station, Ashti. Police came to the school for inquiry. Thereafter, the petitioner had on 01.09.2015, itself, forwarded a report to that effect to the Project Officer. Further, the fact that Raju Landge has committed sexual assault upon Ku. R. was disclosed to everyone. On 02.09.2015, the incident was published in daily newspaper, "Lokmat", under the heading, *"Choukidar Has Committed Rape On Ashram School Girl."* It was reported that the petitioner has made an attempt to suppress the incident. Thereafter, the Project Officer along with five members visited the Ashram School and made the preliminary inquiry. The preliminary inquiry report was submitted to the Additional Commissioner, on 03.09.2015. Four Member Committee consisting of females was constituted to conduct the inquiry in sexual assault upon Ku. R. The committee inquired with the teachers and students of the Ashram School and submitted the report to the Commissioner on 24.11.2015. Thereafter, the departmental inquiry was

initiated against the petitioner, which resulted into his termination from the service.

8. The defence of the petitioner before the inquiry officer was that the construction work had commenced in the year 2011-12. Raju Landge was deployed as watchman by the contractor even prior to the petitioner joining the service as Head Master of the Ashram School. The said watchman and other labourers were residing in the said premises. The building was not handed over to the department and therefore the contractor had deployed the watchman at the construction site. The controlling officer had not reported to the Petitioner about the alleged unauthorised stay of Raju Landge in the premises.

9. It is further the defence of the petitioner that on 19.08.2015, Mrs. Dighore and Mr. Rangari had informed him of only the quarrel between Ku. R and Ku. S. It was reported that the girls have exchanged vulgar abuses in the name of Raju Landge. The petitioner directed Mrs. Dighore to submit a written report which she did not. The petitioner was required to go to Nagpur in the evening as his wife suffered cardiac

arrest. His wife has undergone angioplasty and therefore the petitioner was required to stay at Nagpur till 31.08.2015. While leaving the headquarter, the charge was handed over to Mr. Rangari and therefore during the period of absence of the petitioner. Thus, he was compelled to leave the headquarter on 19.08.2015 and therefore, cannot be said to have committed dereliction in performance of his duties. Mr. Rangari ought to have taken necessary steps. So far as receiving information of the incident on telephone on 21.08.2015 is concerned, since Mrs. Dighore had not witnessed the incident and since there was no cogent information or evidence of sexual assault on Ku. R, the petitioner thought it proper to advise Mrs. Dighore not to disclose the incident to the outsiders to save the glory of the department.

10. Mr. Dharmadhikari, learned counsel for the petitioner, vehemently argued that considering the role attributed to the petitioner, what transpires is that he was partly aware of the incident when he left the headquarter on 19.08.2015, however, his focus thereafter was towards the

treatment of his wife. He discharged his duties to the best of his abilities and has taken necessary steps to save the glory of the department. He is not responsible for the alleged unauthorised stay of Raju Landge in the premises of the Ashram School. According to Mr. Dharmadhikari, if building was not handed over to the department, it is routine practice that the contractor will depute his watchman to protect his articles and other materials kept at the site. He submits that even otherwise charge to that effect is not proved. In the circumstances, the punishment of termination from service is disproportionate to the role assigned to the petitioner and accordingly urged to make it right vis-a-vis the circumstances under which the charge has been said to be proved against the petitioner.

11. As against, the learned A.G.P. submits that because of negligence of the petitioner, a student of Class-III, aged about 9 years, suffered sexual assault at the hands of Raju Landge, an unauthorized occupant in Ashram School. Had the petitioner taken timely steps to remove him from the premises, the incident would not have occurred. He further submits that the

defence of saving glory of the department is an afterthought. The petitioner ought to have reported the matter to the Project Officer on 19.08.2015 itself or immediately thereafter. His failure to act in time, not only resulted in sexual assault on Ku. R but also caused ignominy to the department when the incident was published in the local newspaper, 'Lokmat'. Learned A.G.P. has further argued that while having judicial review of the judgment of the Maharashtra Administrative Tribunal, the Court will consider whether the departmental inquiry was conducted in accordance with law and whether the relevant piece of evidence has been taken into consideration and whether the principles of natural justice have been adhered to during the inquiry. Once the aforesaid procedure is complied with then this Court has a limited scope to interfere with the findings rendered by the authorities below. In support of his contentions, he has relied upon judgments in Union of India & Ors. Vs. Mangobinda Samantaray¹; and The State of Rajasthan and Ors. Vs. Heem Singh².

12. We have given thoughtful consideration to the submissions made by both the sides and the material placed before us. We have also gone through the evidence led before the inquiry officer with the assistance of learned counsel appearing for both the parties.

13. We are conscious of the legal proposition that in the writ jurisdiction, the scope of judicial review in the matters of disciplinary action is limited, as held in the judgments cited by the A.G.P. In *Managobinda Samantaray* (supra), the charges against the respondent therein were that he was working as Constable in Central Industrial Security Force and while he was on duty in the intervening night of 03.01.2020 and 04.01.2020 for patrolling, he was found sleeping at watch tower no.5 by officer ASI. The respondent therein abused, misbehaved and assaulted the ASI on the right shoulder. He was dismissed from the service by the appellate authority. Against the order of dismissal, he preferred Writ Petition before the High Court of Orissa. The petition came to be

allowed on the ground that the punishment of dismissal from service was shockingly disproportionate to the quantum of the offence. This order passed by the learned Single Judge was carried before the Division Bench of the High Court of Orissa. The petitioner and respondent preferred cross-appeals before the Division Bench. The Division Bench dismissed the appeal preferred by the Union of India and confirmed the order passed by the learned Single Judge, setting aside the punishment of dismissal passed by the appellate Court and restoring the punishment of reduction imposed by the disciplinary authority. The matter was carried before the Hon'ble Supreme Court, which, while upholding the order passed by the appellate authority, dismissing the respondent from service, has observed in paragraph 9 thus:

“.....In the present case, the procedure requiring issue of show-cause notice and compliance with the principles of natural justice is made. Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to

judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice. The decision is also disturbed when it is found to be ailing with perversity. On the question of quantum of punishment, the court exercising the power of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and excluded irrelevant matters. In the context of quantum of punishment these aspects are examined to consider whether there is any error in decision making process. On merits of the quantum of punishment imposed, the courts would not interfere unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.”

14. Thus, it is held by the Hon'ble Supreme Court that on the question of quantum of punishment the court exercising the powers of judicial review can examine whether the authority has been a reasonable employer and has taken into consideration measures, magnitude and degree of misconduct and all other relevant circumstances and excluded relevant matters. It is further held that the Courts would not interfere on the quantum of punishment unless the exercise of discretion in awarding punishment is perverse in the sense the punishment imposed is grossly disproportionate.

15. Was the employer reasonable in the present case in imposing the punishment of dismissal considering the fault attributed to the petitioner, is the question that we are faced with.

16. The incident that has occurred in Ashram School where a girl aged 9 years has been assaulted sexually by watchman is undoubtedly an intolerable incident, but the question is, to what extent could the petitioner be blamed for the incident. The punishment of dismissal from service is; in

service jurisprudence, nothing less than the death penalty for the offences under the Indian Penal Code. Is fault of the petitioner so grave that the employer was left with no other alternative but to terminate the services of the petitioner? We will consider the evidence led before the disciplinary authority to answer the aforesaid question.

17. It appears that, 12 witnesses were examined before the disciplinary authority. The evidence of Mr. Rangari, the male superintendent, was recorded on 25.07.2016. He deposed that on 16.08.2015 at about 09.30 to 10.00 am, his wife had informed that two girl students, Ku. R and Ku. S were quarreling with each other by saying that Raju Landge has committed sexual intercourse with both. Since, it was late night, he did not inquire with Raju nor did he inform the incident to the petitioner. On 19.08.2015, Mrs. Dighore, lady superintendent of the hostel, at about 09.30 to 10.00 a.m. informed the same fact to Mr. Rangari. At about 10.30 to 11.00 a.m., both Mr. Rangari and Mrs. Dighore approached the petitioner and Mrs. Dighore informed the said fact to the

petitioner. The petitioner however was of the view that on the basis of the said information, no inference could be drawn and therefore instructed to conduct detailed inquiry and to keep watch on both the students and submit written report by evening. Mr. Rangari then deposed that he spoke to the petitioner and both thought that there were no signs of commission of rape and therefore they decided to take steps after conducting inquiry. He then deposed that in the evening at about 06.00 p.m. the petitioner called both Mr. Rangari and Mrs. Dighore and asked Mrs. Dighore as to whether inquiry has been conducted, to which she said that there are no signs of occurrence of incident as alleged and that the girl students are playing. Mr. Rangari then deposed that the petitioner thereafter left for Nagpur by handing over the charge to him.

18. His evidence will then disclose that after 2-3 days, there were whispers in the town that rape has been committed on the student of the hostel and one student is pregnant. Mr. Rangari informed the said fact, on phone, to the petitioner, to which the petitioner opined that, had there been truth, they

would have been informed of the same and then he said that once he returns back, necessary steps will be taken. The evidence would then disclose that Mr. Rangari was confident that nothing has occurred as alleged and therefore he did not take any step while he was incharge Head Master. In the cross-examination, he stated that on 20.08.2015, he had not asked for report from Mrs. Dighore. He has also stated that on 19.08.2015, had the petitioner taken immediate steps, the whispers in the town would not have occurred nor would the school been disgraced. He also admitted that the petitioner had asked Mrs. Dighore to immediately submit the inquiry report and said that if there is truth then he will take Raju Landge to Police Station on that day itself. He has also admitted that on 19.08.2015, upon inquiry made by the petitioner as to whether any such incident has occurred, Mrs. Dighore said that it did not so transpire.

19. Thus, the evidence of Mr. Rangari, who was a responsible officer, shows that the petitioner had asked the lady superintendent, Mrs. Dighore to conduct inquiry and

submit report immediately and further proposed to take Raju Landge to Police Station, if the information is found to be true. Admittedly, the inquiry report was not submitted in writing on 19.08.2015. There is further no dispute that the petitioner was required to leave the headquarter under compelling circumstances. There is further no dispute that Mr. Rangari while acting as incharge Head Master did not report the matter to Police Station nor did he take necessary steps in absence of the petitioner. Both Mr. Rangari and Mrs. Dighore were of the opinion that the incident so alleged has not occurred.

20. The evidence of Mrs. Dighore was also recorded on 25.07.2016. Her evidence will show that she was responsible for taking all necessary steps in respect of the girl students admitted in the Ashram School. On the point of incident, she has stated that Ku. R. and Ku. S. were quarreling in the afternoon on the ground of something and were hurling vulgar abuses in the name of Raju Landge. At that time, Ku. S. informed her that Raju Landge has committed sexual assault

on Ku. R. She (Mrs. Dighore) examined private parts of Ku. R but did not find any symptom of occurrence of rape. She did not disclose the said fact to Mr. Rangari and the petitioner as both were not in the school. On 19.08.2015, at about 09.30 a.m., Mrs. Dighore shared the information received by her through Ku. S to the male superintendent Mr. Rangari. Thereafter, both approached the Petitioner and informed him of the said fact. Mrs. Dighore proposed to disclose the fact to the other employees, to which the petitioner advised not to spread the news and instructed Mrs. Dighore to inquire with the girl student and to submit the report. However, she did not submit the report. On 21.08.2015, she informed the petitioner, on phone, that there are certain complaints against Raju Landge and she asked whether Ku. R. should be taken to the hospital to which the petitioner said no. She has also stated that when she informed of sexual assault on Ku. R to Mr. Rangari, he countered by saying did she witness the sexual assault and therefore she refrained from taking Ku. R. to the hospital. In the cross- examination, she admitted that she

committed mistake by not reporting the matter in writing to the petitioner. She has also admitted that the petitioner was on leave from 20.08.2015, on account of illness of his wife and the charge was handed over to Mr. Rangari.

21. The evidence of Mrs. Dighore will indicate that she has not witnessed the incident. She has witnessed the quarrel between the girl students. The quarrel between the students is a routine matter and therefore it appears that the petitioner instructed Mrs.Dighore to conduct inquiry and submit written report. As such, Mrs. Dighore ought to have reported the quarrel in writing, if according to her, the information disclosed carried serious repercussions. Neither did she report in writing the information so received nor did she file written report on 19.08.2015, though directed by the petitioner. She did not even submit report to Mr. Rangari, the incharge Head Master. She was aware that the petitioner was required to leave the headquarter on account of illness of his wife. She being in direct control of the activities of the girl students in the Ashram School, she ought to have lodged

report with police or at least ought to have reported in writing the incident to the petitioner and in his absence to Mr.Rangari, but she did nothing but made an attempt to shift burden on the petitioner.

22. Mr. Dharmadhikari, learned counsel for the petitioner, has rightly argued that there is a reason for such conduct of Mrs. Dighore. The reason being, Mrs. Dighore was made accused (No.3) in the charge-sheet filed before the Court of Special Judge, POCSO Act, in which Raju was arrayed as accused No. 1 and the petitioner as accused No.2. The case was registered on 03.11.2015 and decided on 11.01.2018, meaning thereby that when the evidence of Mrs. Dighore was recorded on 25.07.2016, the criminal case was pending against her. The charge against Mrs. Dighore, was that she failed to report the commission of offence of rape so as to screen the offender. Similar was the charge against the petitioner. In the circumstances, to save herself, she is likely to shift burden on the Petitioner who was facing similar charges.

23. Nonetheless what transpires from her evidence is that she came to know of the incident of sexual assault on Ku. R on 18.08.2015, but did not report the same to Mr.Rangari or the petitioner. She found that there are no symptoms of commission of rape on Ku.R. She shared the information with Mr. Rangari and the petitioner on 19.08.2015, upon which the petitioner instructed her to submit the written report, which she did not. The petitioner left the headquarter on 20.08.2015 under the compelling circumstances. Mrs.Dighore did not submit the report in writing to the incharge Head Master.Both Mrs. Dighore and Mr. Rangari failed to take necessary steps in absence of the petitioner and waited for the petitioner to report back to the duty. She has submitted that she committed a mistake by not submitting information received by her in writing.

24. The evidence of these two witnesses is crucial on the point of fault that could be attributed to the petitioner in the entire incident. Admittedly, the picture was not clear when the

petitioner left the headquarter on 19.08.2015. Had the report been filed in writing by Mrs. Dighore, and had the Petitioner ignored it, he could have been blamed for dereliction in discharging his duties. However, the petitioner with due diligence instructed Mrs. Dighore to submit the inquiry report in writing which she did not. When the petitioner reported back to the duties on 31.08.2015, much water had been flown about the incident for which Mr. Rangari contributed more than the Petitioner for not reporting the matter to the Police. As stated earlier, Mr.Dharmadhikari, has rightly argued that Mrs. Dighore being accused before the Sessions Court, her evidence ought to have been considered with caution, considering the possibility of shifting burden on the petitioner. Mr. Rangari was also in dock of not taking necessary steps in the absence of the petitioner and therefore his evidence was also required to be analysed cautiously. This is so because no other witness out of 12 witnesses has deposed against the petitioner, rather they supported the petitioner. The evidence of the witness named M. T. Bhasme would show that he came

to know of the incident on 21.08.2015. He met Mrs. Dighore and instructed her to inquire about the incident and to report the factual status, to which Mrs. Dighore informed him that nothing has happened as alleged and the girl student is hale and hearty. He has then deposed that Raju Landge was residing in the premises for last three years and there was no complaint against him. He then deposed in favour of the petitioner by stating that since the time he has been appointed as Head Master, the atmosphere in the school turned disciplined. The petitioner has caused cleanliness in the premises and has brought back the glory of the school. On 31.08.2015, when he (the petitioner) returned back, he called a meeting and inquired about the incident but no one disclosed any information to him. He has further deposed that he has also informed Mr.Rangari, the incharge Head Master to conduct inquiry and approach the police station but nobody took action. The other witnesses have also supported the petitioner and therefore charge no.3 has been found to be not proved against the petitioner and charge no.2 to the context of

petitioner permitted unauthorized stay of Raju Landge is also found to be not proved.

25. Thus, what remains is the evidence of Mr. Rangari and Mrs. Dighore. Their evidence, if considered in the light of the discussion made hereinabove would show that on 19.08.2015, the petitioner has given necessary instructions to the lady superintendent Mrs. Dighore to conduct inquiry and submit the written report, which she failed. The evidence also indicates that the petitioner has stated that if Raju Landge is found to be involved in the incident, he will take him to the police station immediately. Both Mrs. Dighore and Mr. Rangari were of the opinion that the incident as alleged has not occurred. Thus, in absence of report in writing and in absence of cogent information of occurrence of incident, the petitioner cannot be blamed for not approaching the police station on 19.08.2015, though he himself could have conducted the inquiry but there is nothing wrong in asking Mrs. Dighore to conduct the enquiry because she was directly responsible for welfare of girl students. It is always advisable to instruct a lady

officer to conduct inquiry in such matters so that girl students could comfortably participate in the discussions. The petitioner was then required to leave headquarter to attend his wife who suffered cardiac arrest and then undergone angioplasty. When he returned back on 31.08.2015, he called a meeting where no one disclosed to him about the incident. The parents of Ku. R. reported the matter to the police. In the circumstances, though the evidence of these two witnesses is suggestive of the fact that the information of the incident was passed on to the petitioner by these witnesses, they themselves were not sure of the occurrence of the incident, rather they were confident that the alleged incident has not occurred. Therefore, the fault of the petitioner, vis-à-vis the proved charges could be said to be of a lesser gravity.

26. The employer ought to have considered the evidence of other witnesses who have supported the petitioner on the point of discipline, cleanliness, etc. of the premises. The evidence of Mr. Rangari and Mrs. Dighore ought to have been evaluated keeping in mind the blame carried by them of not

acting in the manner befitting their duties. The steps taken by the petitioner prior to leaving the headquarter ought to have been considered in his favour. Further the petitioner cannot be blamed for so called unauthorised stay of Raju Landge in the school premises. He was deployed as watchman of newly constructed hostel building which was not handed over to the department. There were no complaints against Raju Landge. There is no evidence that the petitioner has intentionally not taken steps to take the possession of the newly constructed building and thus allowed Raju to stay back. We are, therefore of the considered view that the decision of the employer imposing the punishment of dismissal from service against the petitioner, in the peculiar facts and circumstance of the case, is grossly disproportionate.

27. Resultantly, we partly allow the petition. The impugned orders dated 18.07.2019 passed by Maharashtra Administrative Tribunal, Nagpur in Original Application No.625/2018 and order dated 17.02.2017 passed by the Additional Commissioner, Tribal Development, Nagpur, are

quashed and set aside. Instead, the punishment is modified to the compulsory retirement of the petitioner from service. Consequently, benefits of modified punishment be extended to the petitioner, in accordance with law, as expeditiously as possible.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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