

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 17269 of 2018

R.Thiyagarajan,
SI/Exe, No.994850540,
Head Quarters, Coy,
Central Industrial Security Force,
RTC, Arakkonam,
Vellore District, Tamil Nadu.

...Petitioner

Vs.

1. The Union of India,
Rep. By its Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General
Central Industrial Security Force,
Head Quarters,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
3. The Inspector General,
Training Sector,
Central Industrial Security Force,
National Industrial Security Academy,
Hakimpet, Hyderabad - 78.
4. The Deputy Inspector General,
Central Industrial Security Force,
South Zone, Head Quarters,
Besant Nagar, Chennai - 600 090.
5. The Principal/Deputy Inspector General,
Central Industrial Security Force,
Regional Training Center, Suraksha Campus,
Arakkonam, Vellore District.
Tamil Nadu - 631 152.
6. The Assistant Commandant/Trg,
Central Industrial Security Force Unit,
Regional Training Center, Suraksha Campus,
Arakkonam, Vellore District,
Tamil Nadu - 631 152.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for Writs of Certiorarified Mandamus, call for the records relating to the order passed by the 5th respondent dated 17.03.2018 in is order No.37035/RTC(A)CISF/2nd (B)SI/EXE(LDCE)/Trg/2018/3800 and the consequential order of the 6th respondent in his order No.E-14014/CISF/RTC(A)/SI/Exe(LDCE)/Trg/18/5875 dated 04.05.2018 and quash the same in so far as the portion of the order relating to the backwages and to direct the respondents to pay backwages from 09.01.2012 to 28.03.2018 and to disburse the benefits as per the representation of the petitioner dated 23.04.2018 to the petitioner together with interest and thus render justice.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.K.Srinivasamurthy
Central Government Standing
Counsel

ORDER

The prayer sought for herein is for issuance of a writ of certiorarified mandamus, to quash the order passed by the 5th respondent dated 17.03.2018 in its order No.3703/RTC(A)CISF/2nd (B)SI/EXE(LDCE)/Trg/2018/3800 and the consequential order of the 6th respondent in his order No.E-14014/CISF/RTC(A)/SI/Exe(LDCE)/Trg/18/5875 dated 04.05.2018 in so far as the portion of the order relating to the backwages and to direct the respondents to pay backwages from 09.01.2012 to 28.03.2018 and to disburse the benefits as per the representation of the petitioner dated 23.04.2018 to the petitioner together with interest.

2. The petitioner joined in the Central Industrial Security Force [in short, CISF] as constable on 01.08.1999 at Chennai. Thereafter, he worked in various places till 2011. In the year 2011, there was a competitive examination for in-service candidates like the petitioner for the post of Sub-Inspector of Police in the same force and in the said competitive examination, which was written by the petitioner, he has become successful. Therefore, he was selected and appointed as Sub-Inspector of Police by order dated 08.10.2011.

3. Subsequently, he was on training, however, during training, on 09.01.2012 he was terminated from service.

4. Though the said termination was made based on certain allegations against the petitioner and since he was in training period, it seems that no enquiry was conducted by initiating any

disciplinary proceedings. However, challenging the said order of the respondents dated 09.01.2012 terminating the service of the petitioner from the post of Sub-Inspector of Police, the petitioner has moved this Court by filing a writ petition in W.P.(MD).No.817 of 2012. The said writ petition came to be disposed of by a learned single Judge of this Court by order dated 20.09.2017.

5. In the said decision, the learned Judge has allowed the writ petition with the following terms:

'12.Although several grounds have been raised while assailing the impugned order of termination, but this Court is of the view that the termination being founded on the basis of certain allegations against the petitioner and no opportunity had been afforded to the petitioner for disproving such allegations, the termination is per se bad in law and cannot be sustained. Even otherwise, it has to be seen, as narrated above, that the authority with a malafide intention slapped the order of termination on the petitioner without spelling out any reason. In the said circumstances, this Court has no hesitation in allowing the writ petition. The impugned order dated 09.01.2012 cannot be sustained under any circumstances and therefore the same is set aside. The respondents are directed to reinstate the petitioner as Sub Inspector (Executive) within a period of two months from the date of receipt of a copy of this order.

13.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.'

6. As against the order passed by the Writ Court, the respondents CISF filed an intra-court appeal in W.A.No.307 of 2018, which was also came to disposed of by a Division Bench of this Court by order dated 07.02.2018, whereby the Division Bench, having confirmed the order passed by the learned Judge/Writ Court, has dismissed the intra-court appeal filed by the respondents CISF. The relevant portion of the Division Bench order reads thus:

'6. What is pertinent to note is that the learned Single Judge has observed in the order as under:-

"11. In the instant case, although the petitioner's services came to be terminated during the period of probation, yet, the counter affidavit contains several allegations against the petitioner, which formed the basis of issuance of the impugned order of termination and the order passed by the

authority without giving any opportunity to the petitioner is therefore per se unreasonable, arbitrary and the same suffers from colourable exercise of power. Moreover, it has to be seen that terminating the services of the petitioner, who was merely a promotee from the earlier rank of Constable is contrary to the Rules and the said action on the part of the authority concerned discloses the vindictive mind set and therefore, this Court can safely infer that the termination is founded on malafide intention and cannot be sustained in law."

7. It appears that though a lot of allegations were made against the writ petitioner including insubordination, the writ petitioner had been discharged from service without any opportunity to disprove the same. In such a situation, what is provided is either he should be reverted back when he was selected from a lower rank that too after giving him sufficient opportunity to disprove the allegations. Instead, his service had been straightway discharged without giving any reasons. In such circumstances, the learned Single Judge has taken the view that the procedure adopted by the appellants is against the principles of natural justice and as such, the learned Single Judge had set aside the impugned order. On perusal of the reasoning given by the learned Single Judge to arrive at such a conclusion, we find no illegality or infirmity with the order passed by the learned Single Judge. However, without expressing any opinion or comment about the order impugned in the writ petition, we confirm the order passed by the learned Single Judge. The writ appeal is dismissed. No costs. The connected miscellaneous petition is also dismissed. '

7. Only pursuant to these series of orders, one by the Writ Court and another by Division Bench of this Court, the respondents CISF have decided to reinstate the petitioner and an order to that effect was passed on 17.03.2018, where the petitioner had been reinstated, however without any backwages on the ground of "No Work No Pay". The said order dated 17.03.2018 denying the backwages to the petitioner is under challenge in this writ petition.

8. Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner, who would submit that the very termination against the petitioner during training period on 09.01.2012 was found unlawful and unjustifiable by the order of the Writ Court referred to above and that is the reason why reinstatement was

ordered and when that order was appealed by the respondents CISF, the Division Bench also confirmed the order. Therefore, having accepted the orders passed by this Court, reinstatement was made in favour of the petitioner dated 17.03.2018.

9. When the backwages were sought for by the petitioner that was also rejected by the order of the respondent through Official Memorandum dated 04.05.2018. The denial of backwages is not based on any legal ground, because, once the termination itself is found to be unlawful and a direction was issued by the High Court to reinstate the petitioner, both by the learned Single Judge under Article 226 of the Constitution as well as by the Division Bench disposing the Letter Patent Appeal in this regard, the respondents CISF had no other option except to reinstate the petitioner with backwages unless and until the employer has come out with the evidence to prove that the petitioner during the non-employment period had worked for gain somewhere. Therefore, the learned counsel appearing for the petitioner would seek indulgence of this Court against these orders dated 17.03.2018 and 04.05.2018.

10. Per contra, Mr.K.Srinivasa Murthy, learned Central Government Standing Counsel appearing for the respondents, by relying upon the counter affidavit as well as the instructions received by him would contend that, the prayer sought for by the petitioner before the Writ Court in the first round i.e., in W.P.No.817 of 2012 is to set aside the order of termination dated 09.01.2012 and also for a direction to the respondents to take the petitioner into the strength of CISF as Sub-Inspector and complete the basic training for remaining 10 weeks with seniority and to pay all monetary benefits.

11. Though such a prayer was couched and sought for by the petitioner, the Writ Court while deciding the writ petition has passed the order with the following effect viz., "The respondents are directed to reinstate the petitioner as Sub Inspector (Executive) within a period of two months from the date of receipt of a copy of this order. The writ petition stands allowed on the above terms."

12. Relying upon this operative portion of the order of the Writ Court, the learned counsel would contend that, only reinstatement was ordered, though backwages and other benefits were sought for by the petitioner, and ultimately, the writ petition stood allowed only on the said terms, that means, only reinstatement was permitted by the Writ Court and not the backwages.

13. Even when intra-court appeal filed by the respondents CISF was dismissed by the Division Bench, where also it was

stated that "Without expressing any opinion or comment about the order impugned in the writ petition, we confirm the order passed by the learned Single Judge and the appeal is dismissed", which means, what said by the Writ Court alone was allowed that means the prayer cannot be extended or the relief granted already by the Writ Court cannot be further extended without any orders specifically issued in this regard either by the Writ Court or by the Writ Appellate Court.

14. Therefore, the learned Standing Counsel appearing for the respondents would contend that, the present plea made in the instant writ petition to seek for backwages, for which, the petitioner is not entitled to. In support of his contention, learned counsel appearing for the respondents has relied upon two decisions of the Hon'ble Supreme Court. The first decision is in the case of State Bank of India Vs. Ram Chandra Dubey and Others [2001 (1) SCC 73], where the learned counsel relied upon the following:

'8. "The principles enunciated in the decisions referred by either side can be summed up as follows :

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre existing benefit or one flowing from a pre existing right. The difference between a preexisting right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33 C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum : 9 : (RC) wherein such question of back wages could be decided is only in a proceeding

to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages. '

15. The other decision in the case of Rajasthan State Road Transport Corporation and Ors. Vs. Shyam Bihari Lal Gupta [2005 (4) L.L.N 369], where the learned counsel relies upon the following:

'4. In an almost identical case, this Court in Rajasthan State Road Transport Corporation V. Ladulal Mali [(1996) 8 SCC 37], held that the decree does not contain payment of back-wages. Only declaratory relief of the nature granted in the present case was granted. Further, in Andhra Pradesh State Road Transport Corporation V. S.Narsagoud [2003 (1) L.L.N. 812], in Para.9, at page 814, this Court held as follows:

"We find merit in the submission so made. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with the benefit of continuity in service."

Of course, the abovenoted case related to the question of granting increments notionally. But the principles laid down relating to specific non-mention about any monetary benefit is relevant. As was noted in Rajasthan State Road Transport Corporation case

(vide supra), there was no decree for grant of any monetary benefits.

5. Above being the position, the High Court's order cannot be maintained and is set aside. The appeal is, accordingly, allowed. No costs.'

16. By relying upon these decisions, learned counsel would contend that in the first case, what has been granted by the Labour Court alone shall be executed by the employee and if backwages is not specifically given by the award passed by the Labour Court, it cannot be considered by the High Court that such backwages have been granted by the Labour Court and accordingly, the backwages sought for by the employee cannot be extended.

17. In the second case, he would contend that, like that, if a suit is filed for various reliefs including backwages and a decree is passed, where the backwages has not been specifically decreed, the Execution Court cannot have a right to execute the decree of backwages, which is not in fact the decree by the Civil Court and therefore, in that context, learned Standing Counsel would submit that what has not been stated by the Civil Court in passing a decree cannot be expected to be executed. By citing these two decisions, he vehemently contended that by the orders of the learned Single Judge under Article 226 of the Constitution of India, if at all the Judge thought to give the backwages, he would have mentioned in the order. In the absence of any specific line about backwages, it can be considered that the petitioner was entitled for reinstatement alone and not any backwages. Therefore, the learned counsel appearing for the respondent would contend that the present prayer sought for in this writ petition is untenable.

18. He would also contend by citing a decision in the matter of Sarguja Transport Service Vs. State Transport Appellate Tribunal & Ors. [1987 1 SCC 5] that once the party approached the Writ court and got a relief, as per the doctrine of res judicata, once again the extraordinary jurisdiction of this Court under Article 226 of the Constitution cannot be invoked, where already such a invocation has been undertaken. By citing this decision, learned counsel would contend that, herein the case in hand, in the earlier prayer sought in the first round, the petitioner seeks for quash of the termination order and as a consequential relief for grant of backwages. However, the Writ Court only allowed the reinstatement but not the backwages. For the said relief once again the present writ petition has been filed. Therefore, on that ground also, he seeks dismissal of this writ petition.

19. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

20. During the non-working period, it is also brought to the notice of this Court by the learned counsel appearing for both sides that, the petitioner pursued the law degree, that is full time of three years degree and after having successfully completed the law degree course, he has enrolled in the Tamil Nadu Bar Council on 24.12.2016 and started his practice and suspended the practice only on 27.03.2018 that is after the reinstatement order passed by the CISF.

21. Therefore, it was another argument on the side of the respondents' counsel that, since he pursued the law degree as full time course, he cannot claim any backwages for that period because, he would not have earned in that time as he pursued the law degree in full time course for three years, had he done the course when he was in service with the respondent and if at all the petitioner wanted to pursue the law course, he would have got the permission of the respondents. Therefore, for that period also the petitioner is not entitled for salary and for the remaining period between 24.12.2016 to 27.03.2018 admittedly, since he had been in Tamil Nadu Bar Council Roll and was a law practitioner, he is not entitled for any backwages otherwise.

22. Insofar as the contention raised by the respondents that the Writ Court has only allowed the writ petition with regard to reinstatement and not another relief as sought for by the petitioner is concerned, the law is well settled in this regard that, whenever a workman or employee approaches the Court, where the removal of service ordered against such worker or employee is found to be unlawful and as a sequel, reinstatement is ordered, it is an automatic exercise, where, the employee or worker is entitled to get the backwages for the non-working period unless and until the employer or Management is able to prove that during the non-working period, the employee or worker had worked for gain elsewhere.

23. Catena of judgments have come in support of this legal proposition and the lead judgment is the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya [(2013) 10 SCC 324]. Following the judgment, similar issues had been decided in number of cases by the law Courts.

24. Moreover, the learned Single Judge has found that the termination was unlawful and directed to reinstate the petitioner. Once the termination found to be unlawful one, the following relief of backwages is also attached with the

reinstatement order unless and until that is specifically denied by the Court. Here, neither in the order of the Writ Court nor in the order of the Division Bench, such specific denial of backwages has been mentioned.

25. Insofar as the two decisions cited by the learned counsel appearing for the respondents CISF, the case in Ram Chandra Dubey and Ors (cited supra), has arisen out of a Labour Court award, where when the petition under Section 33-C(2) of the Industrial Disputes Act, 1947 was allowed it seems to have been proceeded without an order of backwages by the Labour Court in the earlier award. Therefore, the Hon'ble Supreme Court has held in that case that such a proposition cannot be justifiable.

26. In another decision in Shyam Bihari Lal Gupta's case (cited supra), it was a decree passed by the Civil Court. In the suit, though several reliefs sought for, only for limited relief it has been decreed by the Civil Court. Therefore, in that context, the Hon'ble Supreme Court held that the Execution Court ought not to have been persuaded for any other relief other than the one granted by the Civil Court in the decree.

27. Hence the principle of the said two cases cited by the learned counsel appearing for the respondents cannot be made applicable to the facts of the present case. Once the constitutional Court, by exercising its extraordinary power under Article 226, had found that the termination against the petitioner was unlawful and therefore, as a sequel, reinstatement was ordered, which means that the reinstatement is with all benefits including continuity of service as well as backwages.

28. Insofar as the contention of the respondent counsel by citing the Sarguja Transport's case (cited supra) is concerned, the doctrine of res judicata would not apply to the present case, because, the backwages ought to have been given to the petitioner pursuant to the earlier round of litigation i.e., the Writ Court order confirmed by the Division Bench of this Court. However, since the same was not given or denied by the order, which are impugned herein i.e., order dated 17.03.2018, the petitioner pursued once again to get the backwages and that was also considered and again rejected through the second impugned order. Therefore, it is not only continuous cause of action but a new cause of action by virtue of the second order passed by the respondents, hence the doctrine of res judicata cannot be put against the petitioner. Therefore, that argument of the learned counsel appearing for the respondents is liable to be rejected, accordingly, it is rejected.

29. Now let us see the Rule position which governs all the personnel of the CISF like the petitioner. In rule 26 under the caption "termination", the following rule has been made.

'26. Termination - (1) Where the appointing authority has terminated the services of a probationer, the Inspector General may on his own motion or otherwise reopen the case and after making such enquiry as thinks fit may : (i) confirm the action taken by the appointing authority; (ii) withdraw the notice; (iii) reinstate the probationer in service; or (iv) make such other order in the case as he may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months.

(a) From the date of notice, in a case where notice is given.

(b) From the date of termination of service in a case where no notice is given.

(2) Where a probationer is reinstated in service under above rule, the order of reinstatement shall specify; (i) the amount of proportion of pay and allowances, if any, to be paid to the probationer for the period of his absence between the date of termination of his services and date of his reinstatement; and (ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

(3) Where the Inspector General has terminated the service of a probationer, acting as appointing authority, all the powers prescribed in sub-rule(1) and (2) above shall be exercised by the Director General and where the Director General has issued the order of termination by the Central Government.'

30. Rule 26(2) is relevant, which makes it clear that, if the higher authority like the Inspector General of Police on his own motion or otherwise reopens the case and passes any order including reinstatement, he must also specifically mention the amount of proportion of pay and allowances, if any, to be paid to the probationer for the period of his absence between the date of termination and the date of his reinstatement.

31. Therefore, the Rule making authorities has made this Rule specifically empowering the employer Appellate Authority

viz., IG of the CISF to either suo mottu or otherwise reopen the case, under which, if the personnel already terminated and ultimately, the Appellate Authority on the suo mottu action found that the termination is unlawful and if they decides to reinstate the personnel into the force, then, order must be specifically made as to the amount of proportion of pay and allowances to be paid to the probationer.

32. Though it has not been specifically mentioned in the order of the Writ Court as well as the Division Bench as to the backwages, the Writ Court order cannot be interpreted to take away the rights conferred under the rules. In this context, necessary order has been passed by the Court of law, hence for that reason also the argument advanced by the learned counsel appearing for the respondents is liable to be rejected. Hence, it is rejected.

33. In the resultant situation, the petitioner is entitled to succeed in this case to get backwages for the non-working period. However, since the petitioner, after having completed the law degree, has enrolled himself in the Tamil Nadu Bar Council on 24.12.2016 and till 27.03.2018 he had been in the roll of law practitioners, for the said period i.e., between 24.12.2016 and 27.03.2018, the petitioner is not entitled for any such backwages. However, for the remaining period the petitioner is entitled to get the backwages, therefore, to that extent the order impugned rejecting the plea of the petitioner to get the backwages for the non-working period is liable to be set aside and accordingly it is set aside.

34. After having come to such a conclusion, it is brought to the notice of this Court that the petitioner, after reinstatement by the orders of the respondent, had joined the service. After sometime he retired from service as voluntary retirement with effect from 19.11.2019 and the same having been accepted the petitioner had been relieved from duty from 19.11.2019. Thereafter, he started the legal profession and as of now he is an active legal practitioner. At the time of hearing of this case, the petitioner is also present before this Court and after having known the fate of his case, he, as a member of the noble profession, has voluntarily come forward to offer that, though his entitlement for backwages has been accepted by this Court and an order is going to be passed in this writ petition, he wants to forego the backwages, for which, he is entitled to during the non-working period except the legal practitioner period that has been mentioned above, as a good gesture. However he wants the money to be utilized for the welfare of legal fraternity.

35. This Court appreciates the gesture shown by the petitioner. Though he has come forward to give up the monetary benefit of backwages, but his entitlement is still there and therefore, the respondents cannot go back from paying the said backwages to the petitioner. Hence, as per the wish of the petitioner the backwages payable to the petitioner can be given to the welfare of the legal fraternity. As a member of the legal profession to set an example to others belongs to this profession that money is not the only desire, he has shown this gesture. Considering these development, this Court is of the view that, the backwages amount payable to the petitioner, instead of paying the same to the petitioner, as he has already wished, the same shall be paid to the Bar Council of Tamil Nadu and Puducherry for the purpose of welfare of young and needy lawyers.

36. In the result, the following orders are passed in this writ petition:

- ◆ The impugned order to the extent of denying the benefit of backwages to the petitioner is set aside. As a sequel, there shall be a direction to the respondent to calculate the backwages payable to the petitioner for the non-working period and such amount with 6% interest shall be deposited to the Bar Council for Tamil Nadu and Puducherry. The Bar Council of Tamil Nadu and Puducherry on receipt of such amount shall utilize the same for the welfare of young and needy lawyers. The gesture shown by the petitioner, who was also present before this Court, is to be appreciated.
- ◆ The needful as indicated above shall be undertaken by the respondents within a period of six(6) weeks from the date of receipt of a copy of this order.
- ◆ Since the Bar Council of Tamil Nadu and Puducherry is not a party to the lis, the copy of this order shall be marked to the Secretary to the Bar Council of Tamil Nadu and Puducherry.

With these directions, this writ petition is disposed of accordingly. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

mp

To

1. The Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Director General
Central Industrial Security Force,
Head Quarters,
CGO Complex, Lodhi Road,
New Delhi - 110 003.
3. The Inspector General,
Training Sector,
Central Industrial Security Force,
National Industrial Security Academy,
Hakimpet, Hyderabad - 78.
4. The Deputy Inspector General,
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6. The Assistant Commandant/Trg,
Central Industrial Security Force Unit,
Regional Training Center, Suraksha Campus,
Arakkonam, Vellore District,
Tamil Nadu - 631 152.
7. The Secretary,
Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus, Chennai - 600 104.

+lcc to Mr.S.T.Varadarajulu, Advocate Sr.44232
+lcc to Mr.K.Srinivasa murthy, Advocate Sr.43872

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