

**HIGH COURT FOR THE STATE OF TELANGANA
(Special Original Jurisdiction)**

TUESDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 45814 OF 2016

Between:

K SARITHA, RANGA REDDY DIST, W/o Late K.Lakshmaiah, 34 years, H.No:33-42/B, New Shapurnagar, I.D.A, Jeedimetla, Rangareddy District-500055.

...PETITIONER

AND

1. MD, TSRTC, HYDERABAD, Bus Bhavan, Mushirabad, Hyderabad-500624, Rep. by its Managing Director.
2. The Executive Director, T.S. R.I. C. Greater Hyderabad Zone., JBS Complex, Picket, Secunderabad.
3. The Regional Manager, T.S. R.T. C. Hyderabad Region., M.G.B.S, Hyderabad.
4. The Dy. Chief Personnel Manager, T.S. R.T. C., Greater Hyderabad Zone, JBS Complex, Picket, Secunderabad.
5. The Depot Manager, T.S. R.T. C. Dilsukhnagar Depot., Dilsukhnagar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased issue an appropriate writ, or order or direction more particularly one in the nature of writ of Mandamus declaring the action of Respondents in not according height relaxation for appointing the petitioner to the post of conductor on compassionate grounds under bread winner scheme, is arbitrary, unjust, contrary to the Bread Winner Scheme notified in Circular No.PD-30/2000 dated 05.05.2000 and Circular No.PD-68/2000 dated 30.11.2000, discriminatory and in violation of Article 14 and Article 21 of the Constitution of India and consequently direct the Respondents to appoint the petitioner to the post of conductor on compassionate grounds duly according height relaxation or otherwise appoint the petitioner in any suitable post of Typist/Attender/Shramik, in the interest of justice and fair play.

I.A. NO: 1 OF 2016(WPMP. NO: 56458 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant an interim direction to appoint the petitioner to the post of conductor duly according height relaxation, pending disposal of the writ petition.

Counsel for the Petitioner : SRI A.G.SATYANARAYANA RAO

Counsel for the Respondents 1-5: SRI N.VASUDEVA REDDY(SC FOR RTC)

The Court made the following : ORDER

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.45814 OF 2016

ORDER:

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

2. The prayer sought for by the petitioner in the writ petition is as follows:

"To issue an appropriate writ, or order or direction more particularly one in the nature of writ of Mandamus declaring the action of Respondents in not according height relaxation for appointing the petitioner to the post of conductor on compassionate grounds under bread winner scheme, is arbitrary, unjust, contrary to the Bread Winner Scheme notified in Circular No.PD-30/2000 dated 05.05.2000 and Circular No.PD-68/2000 dated 30.11.2000, discriminatory and in violation of Article 14 and Article 21 of the Constitution of India and consequently direct the respondents to appoint the petitioner to the post of conductor on compassionate grounds duly according height relaxation or otherwise appoint the petitioner in any suitable post of Typist/Attender/Shramik, in the interest of justice and fair play and pass such other order or orders just and necessary in the circumstances of the case."

3. The case of the petitioner, in brief, is as follows:

a) The petitioner's husband Sri. K.Lakshmalah, worked as Driver in the 5th respondent Depot and he died while in service on 14.09.2006. The petitioner and her minor son were dependents on the salary income of late Sri. K.Lakshmalah. The petitioner belongs to BC Community and studied up to Intermediate and passed Typewriting Lower. Petitioner

submitted an application for compassionate appointment to the respondents, but it was kept pending as there was a Ban.

b) As per the scheme of compassionate appointment the eligible dependents i.e., Spouse/Children of the employees died while in service are entitled for compassionate appointment under Bread Winner Scheme, to the posts of Driver, Conductor and Shramik and the scheme provides height relaxation by 2 to 7 C.Ms.

c) The petitioner was called for interview for the post of Conductor under Bread Winner Scheme vide letter No.E6/684(1)/2013-GH-Z, dated 16.07.2013. The petitioner appeared for interview on 29.07.2013 in the 2nd respondent office. Petitioner approached the 4th respondent several times, but no information was given to the petitioner. Then the petitioner represented through workers Union, where it was informed orally in January, 2016 that the petitioner is under height and therefore, compassionate appointment is not considered. The petitioner was the height of 146 C.Ms and as there is provision of relaxation of height, the petitioner submitted applications dated 26.02.2016 and 17.10.2016 to

consider her request for necessary height relaxation, but the case of the petitioner had not been considered till as on date.

d) In similar circumstances, D.Satyabhama, whose height was 144 C.Ms was appointed to the post of Conductor on compassionate grounds. Similarly K.Aruna wife of Late K.Anjalah, was also provided compassionate appointment as Conductor duly according height relaxation. The petitioner is also entitled to the post of Conductor on compassionate grounds duly according height relaxation or otherwise to any suitable post of Typist/Attender/Shramik. Therefore, the writ petition is filed.

4. The case of the respondents, in brief, is as follows:

a) The Petitioner's husband K. Lakshmaiah died on 14.09.2006 while he was in service as a driver in the corporation and as such registered under Bread Winner Scheme. The Petitioner's case was considered for providing compassionate appointment under Bread Winner Scheme and she was called for interview to attend before the Selection Committee on 29.07.2013 and on 30.07.2013 to consider her case for the suitability to the post of conductor Gr-II. After

following the due procedure, the Selection Committee issued proceedings No. E6/684(1)/2013-GHZ, dated 16.09.2013 that the Petitioner is not suitable to the post of conductor Gr-II due to under height i.e. 144CMs as against the required height of 153 CMs.

b) As per the Circular guidelines which were issued time to time in the Corporation, the cases of the candidates shall be considered only basing upon their eligibility for providing compassionate appointment under Bread Winner Scheme to the post of drivers, conductors and shramiks. As per the Recruitment Regulations-2004 of the Corporation, a candidate must have a minimum height of 153 cms to select for the post of conductor. As per the Circular No. PD-68/2000, dated 30.11.2000, the women dependents of the employees who died in harness are eligible for height relaxation up to 7 cms to the pending applicants as on 04.11.2000 only.

c) In fact, the height of the Petitioner is only 144 cms and as such the Selection Committee issued the proceedings dated 16.09.2013 that the petitioner is not suitable to the post of conductor Gr-II due to under height. Even after considering height relaxation of 7 cms, the petitioner does not



meet the required height of 146 cms as the petitioner's height is only 144 cms.

5. Perused the record.

6. The Circular No.PD-30/2000, dated 05.05.2000 reads as under:

"The Spouse/children of employees died in harness are not eligible for any relaxations for consideration of their cases for appointment under Bread Winner Scheme, except age/height relaxations.

The maximum relaxation of height permissible under the Scheme is only 2 C.Ms to consider the dependants of employees died in harness for appointment to the post of Conductor Gr.II only under Bread Winner Scheme."

7. The Circular No.PD-68/2000, dated 30.11.2000, reads as under:

"Further instructions were issued through circular vide reference 3rd cited that the candidates for whom height relaxation upto 2 C.Ms i.e., height with 151 C.Ms against the requisite height of 153 C.Ms, may be processed to Head Officer for obtaining relaxation of height from the Competent Authority to consider them for appointment to the post of Conductor under Bread Winner Scheme.

Inspite of allowing relaxation of under height by 2 C.Ms i.e., 151 C.Ms as against the requisite height of 153 C.Ms to the post of Conductor, several candidates were found not suitable for the post of Conductor due to under height only, This problem is on high side in regard to women candidates than male candidates.

Keeping in view of the hardship being faced by the families of employees died in harness and to render assistance, it has been decided to accord relaxation of under height upto 7 C.Ms in respect of pending cases of lady dependants of employees died in harness so as to consider them for appointment to the post of Conductor Gr-II under Bread Winner Scheme. That means the candidate should have atleast 1467 C.Ms height as against the requisite height of 153 C.Ms and should satisfy all other terms and

conditions to the post of Conductor Gr-II under Bread Winner Scheme as per rules in force."

FACTS NOT IN DISPUTE

8. It is not in dispute that the Government vide G.O.Ms.No.15, dated 07.02.2014, clarified the issue of compassionate appointment and the corporation had issued Circular No.PD-03/2014, dated 01.03.2014 to continue the process of recruitment under Bread Winner Scheme for all future cases also beyond 31.12.2010 and further instructions were also issued vide Circular No.PD-02/2015, dated 10.02.2015. It is also not in dispute that the petitioner was called for interview for the post of Conductor under Bread Winner Scheme vide letter No.E6/684(1)/2013-GH-Z, dated 16.07.2013 and the petitioner appeared for interview on 29.07.2013 in the 2nd respondent office. In spite of the petitioner having approached the 4th respondent several times, no information was given to the petitioner. Then the petitioner represented through workers union and at that stage the petitioner was informed orally in January, 2016 that the petitioner is under height and therefore, the claim of the petitioner for compassionate appointment could not be considered.

9. The petitioner claims that the height of the petitioner is 146 C.Ms and the petitioner submitted applications dated 26.02.2016 and 17.10.2016 to consider her request for necessary height relaxation and though the petitioner approached the respondents on several occasions, but the case of the petitioner had not been considered till as on date. Aggrieved by the same petitioner filed the present writ petition.

10. A bare perusal of the order dated 02.04.2015 passed in W.P.No.9191 of 2015 reads as under:

"The petitioner in this case is a widow of a Security Guard employed with the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'), who died in harness on 24.08.2009. Hence, the petitioner sought for appointment on compassionate grounds, but however, it appears, her height was only 149 centimeters as against the minimum requirement of 153 centimeters for considering her candidature for suitable employment in the Corporation. On that ground, her case has not been considered.

Learned counsel for the petitioner would submit that in somewhat similar circumstances, in the case of Smt. D.Satyabhama, W/o Dorai Swamy, the Executive Director of the Corporation at Picket, Secunderabad, through his proceedings, dated 13.12.2013, has relaxed the physical standard qualification of minimum height of 153 centimeters in favour of Smt.Satyabhama, who was only 144 centimeters tall. I appreciate the manner in which the Executive Director of the Corporation has considered and extended the necessary compassion and sympathy in the case of Smt.Satyabhama.

While entertaining applications on compassionate grounds, certain amount of relaxation of the standards is called for some times. That would only enhance the spirit behind the beneficial scheme of providing employment under the 'bread winners scheme' to mitigate the hardship caused to the family of the employees of the Corporation, who died, while in service, in harness. I am

confident and sure that the respondents would maintain the same spirit and consider the case of the petitioner also on the same lines as that of the case of Smt.D.Satyabhama and they would be passing appropriate orders within a period of 30 days from the date of receipt of a copy of this order.

Since I have heard the learned standing counsel for the Corporation Sr.N.Vasudeva Reddy, who has accepted notice on behalf of the respondents herein, with his consent, the writ petition stands disposed of at the admission stage with this order. No costs.

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

11. The orders passed by the High Court in W.P.Nos.8941, 9548 and 33563 of 2016 reported in AIR 1974 SC 335 between Smt B.(A) Annapurna v TSRTC and in particular Paras 18 to 27 of the said order reads as under:

"18. It is also appropriate to note at this stage the observations of learned single Judge of this Court in W.P.No.9191 of 2015, which propelled grant of such relaxation. It was also the case of claiming employment as Conductor by granting relaxation of height. Learned single Judge observed as under:

While entertaining applications on compassionate grounds, certain amount of relaxation of the standards is called for some times. That would only enhance the spirit behind the beneficial scheme of providing employment under the bread winners scheme to mitigate the hardship caused to the family of the employees of the Corporation, who died, while in service, in harness. I am confident and sure that the respondents would maintain the same spirit and consider the case of the petitioner also on the same lines as that of the case of Smt. D. Satyabhama and they would be passing appropriate orders within a period of 30 days from the date of receipt of a copy of this order.

19. It appears, Smt. K.Aruna was granted relaxation duly taking note of the said observation of the learned single Judge. This observation would apply to all similarly situated persons.

20. Guided by the principle of law laid down by Supreme Court on equality clause and artificial classification in the above decisions, when the action of the respondent corporation is tested,

classification brought about by the respondent corporation by applying different height criteria based on date of death of ex-employee is not sustainable. Further, it is appropriate to note that once appointed, irrespective of source of recruitment, a Conductor shall have to discharge the same duties and responsibilities, whether the bread winner of the family died before 04.11.2000 or after 04.11.2000. When, according to the respondent corporation, a women dependant of employee deceased prior to 04.11.2000 with less than 151 CMs of height can discharge the functions of post of Conductor effectively, I see no good reason to hold that others cannot discharge such duties effectively. The said action cannot stand the test of judicial scrutiny.

21. It is also appropriate to notice that TSRTC restricted provision of compassionate appointment only to three categories of posts i.e., Driver, Conductor and Shramik. In TSRTC, women are eligible to compete only to the post of Conductor. Thus, a woman dependent of deceased employee can claim employment in TSRTC only to the post of Conductor. The appointment is subject to fulfillment of all other requirements. Prima facie, excluding the women dependents for consideration to other posts may be discriminatory against women, having regard to the Constitutional norm and the commitment of the Country to the United Nations convention on the elimination of discrimination against women. Since that is not the issue raised in this batch of writ petitions, the Court is not expressing any opinion.

22. However, since only one post is offered and a woman cannot have height as comparable to men and average height of women in India is 150 Cms, most of the women get excluded from consideration for appointment to the post of Conductor. With advancement of technology and better amenities provided in the Buses operated by the State Road Transport Corporations, it cannot be said that short in height would come in the way of discharge of functions of a Conductor by a woman. The fact that the respondent corporation extending the height relaxation to 146 Cms to a section of dependents of deceased employees would show that a person with 146 Cms can discharge the duties of Conductor effectively.

23. It is also appropriate to note that women with height of less than 150 Cms were appointed working. No material is placed on record to show that on account of less height injuries are caused to them. The statement of respondent-corporation of possible injury is only on assumption and presumption. Furthermore, if a Conductor having lesser height than what is prescribed would have difficulty in holding roof guard, measures can be taken to introduce other means, where a women conductor can hold the balance while Bus is moving and can still discharge her functions effectively.

24. India is signatory to United Nations convention on the elimination of discrimination against women, Convention adopted in

the year 1979 by the United Nations General Assembly, is often described as an international bill of rights for women. It sets up an agenda for national action to end discrimination against women.

25. As a State established entity involved in important public function, it is necessary and imperative for the TSRTC to take all measures to eliminate discrimination in providing employment and create employment opportunities to women and create conducive atmosphere for women to work.

26. On the ground of less height, the claim for provision of compassionate appointment cannot be denied to a woman. This Court is of the opinion that decision of the respondents in not considering the claims of petitioners, though they were selected, merely on the ground that they were falling short of height of less than 151 Cms is arbitrary, discriminatory and unconstitutional.

27. Writ Petitions are accordingly allowed and respondents are directed to consider the petitioners to provide employment as Conductors under the BRS without regard to objection on height. The entire exercise shall be completed within two months from the date of receipt of copy of this order."

12. Counter affidavit filed by the respondents and in particular, Paras 5 to 8 reads as under:

"5. I respectfully submit with regard to the averments made in para No. 2 to 12 of the Affidavit, that the Petitioner's husband K. Lakshmaiah died on 14.09.2006 while he was in service as a driver in the corporation and as such registered under Bread Winner Scheme. I humbly submit that Petitioner's case was considered for providing compassionate appointment under Bread Winner Scheme and she was called for Interview to attend before the Selection Committee on 29.07.2013 and 30.07.2013 to consider her case for the suitability to the post of conductor Gr-II. I humbly submit that the Selection Committee perused the Petitioner's case with the relevant records for the suitability to the post of conductor Gr-II and after following the due procedure, the committee issued proceedings No. E6/684(1)/2013-GHZ, dated 16.09.2013 stating that the Petitioner is not suitable to the post of conductor Gr-II due to under height i.e. 144CMs. as against the required height of 153 CMs.

6. I respectfully submit that as per the Circular guidelines which were issued time to time in the Corporation, the cases of the candidates shall be considered only basing upon their eligibility for providing Compassionate appointment under bread winner scheme to the post of drivers, conductors and shramiks. As per the

Recruitment Regulations-2004 of the Corporation, a candidate must have a minimum height of 153 cms to select for the post of conductor. I humbly submit that as per the Circular No. PD-68/2000, dated 30.11.2000, the women dependents of the employees who died in harness are eligible for height relaxation up to 7 cms to the pending applicants as on 04.11.2000 only.

7. I humbly submit that it is not correct to say that the height of Petitioner is 146 cms. In fact the height of the Petitioner is only 144 cms and as such the Selection Committee issued the proceedings No. E6/684(1)/2013-GHZ, dated 16.09.2013 stating that the Petitioner is not suitable to the post of conductor Gr-II due to under height. I humbly submit that as per the Recruitment Regulations-2004 of the Corporation, the required height is 153 cms for the post of conductor Gr-II. In case of the women dependents of employees who died in harness, height relaxation will be considered up to 7 cms (i.e. 146 cms) for the pending applications as on 04.11.2000 only. I humbly submit that even after considering height relaxation of 7 cms, the Petitioner does not meet the required height of 146 cms as the Petitioner's height is only 144 cms. Accordingly, the proceedings No.E6/684(1)/2013-GHZ, dated 16.09.2013 have been issued stating that the Petitioner is not suitable to the post of conductor.

8. I humbly submit that as per the Recruitment Regulations-2004 of the Corporation, the required height is 153 cms for the post of conductor Gr-II and as per the Circular No. PD-68/2000, dt. 30.11.2000, the women dependents of the employees who died in harness are eligible for height relaxation up to 7 cms and as such the Petitioner does not meet the required height of 146 cms as the Petitioner's height is only 144 cms. Accordingly, the proceedings No.E6/684(1)/2013-GHZ, date 16.09.2013 have been issued stating that the Petitioner is not suitable to the post of conductor. The question of arbitrary, unjust, contrary to the Bread Winner Scheme and violation of Article 14 and Article 21 of the Constitution of India does not arise and moreover the Petitioner filed the above Writ Petition suppressing the fact that she is under height with 144 cms and not suitable to the post of conductor even though relaxation is given to her with regard to height and as such the writ petition is devoid of merits."

DISCUSSION AND CONCLUSION

13. A bare perusal of the contents of the counter affidavit indicates that one and only reason for rejecting the petitioner's request for compassionate

appointment to the post of Conductor is that the petitioner height is 144 C.Ms as against the required height of 153 C.Ms. This is however, disputed by the learned counsel for the petitioner and it is specifically contended that the height of the petitioner is 146 C.Ms and not 144 C.Ms, which is falsely contended by the respondents in the counter affidavit and the petitioner in fact specifically pleaded at Para 7 of the affidavit filed in support of the writ petition that the petitioner height is 146 C.Ms.

14. The Apex Court in it's judgment reported in 2021 (6) ALD 285 (SC) Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association Vs National Textile Corporation Ltd and others¹, very clearly observed that the right to equality under Article 14 of the Constitution of India is vested in favour of person, who claims equality and parity, and therefore, it is enforceable against state instrumentalities in exercise of power under Article 226 of the Constitution and further when equals are treated unequally, there is

¹ 2021 (6) ALD 285 (SC)

violation of Article 14. The equality is a definite concept and those who are similarly circumstanced are entitled to equal treatment. Paras 9(c) and 9(d) of the said judgment reads as under:

"9(C) The submission on behalf of the respondents more particularly learned Counsel appearing for respondent Nos. 2 and 3 that the appellant Association - 318 ex-employees have no legal right and that respondent Nos. 2 and 3 have no legal duty has no substance and cannot be accepted. Right to equality guaranteed under Article 14 of the Constitution of India is vested right in favour of the person who claims equality and parity and the same is enforceable against State / State instrumentalities in exercise of powers under Article 226 of the Constitution of India. We find no justification at all in treating 318 ex-employees different from those 134 ex-employees who were allotted 200 Sq. Yards of plots free of cost. We find that as such the equals are treated unequally and therefore, when the equals are treated unequally, there is a violation of Article 14 of the Constitution and therefore, the appellants were entitled to the relief sought even in exercise of powers under Article 226 of the Constitution of India.

9(D) The concept of equality before the law and equal protection of the laws emerges from the fundamental right expressed in Article 14 of the Constitution. Equality is a definite concept.

The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is therefore to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear in just and rational relation to the object sought to be achieved.

In a given case Article 14 of the Constitution may permit a valid classification. However, a classification to be followed must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another must have a reasonable nexus to the objects sought to be achieved. In the present case allotment of 200 Sq. Yards free of cost to 134 employees was to avoid undue

hardship to the exemployees and as a welfare measure. As observed hereinabove those 318 ex-employees who are denied the benefit of allotment of 200 Sq.Yards of plots free of cost are similarly placed persons with that of 134 employees who are allotted 200 Sq.Yards plots free of cost. There is no rationale justification in providing differential treatment to one class of ex-employees similarly placed with another class of ex-employees who are allotted the plots."

16. Taking into consideration all the above referred facts and circumstances and also the view taken by the High Court under similar circumstances in W.P.No.9191 of 2015 vide order dated 02.04.2015 and in W.P.No.8941 of 2016 and batch vide order dated 13.04.2017, this Court opines that the respondents cannot deny the compassionate appointment to the petitioner on the ground that the petitioner did not fulfill minimum requirement of height of 153 C.Ms, while entertaining applications on compassionate grounds, certain amount of relaxation of the standards is called for some time and it is borne on record that under similar circumstances, the said minimum requirement of 153 C.Ms was also waived and compassionate appointment was provided in case of one D.Satyabhama and also one Smt K.Aruna.

17. This Court opines that there is no justification in denying compassionate appointment to the petitioner and therefore on unreasonable grounds the writ petition is allowed directing the respondents to consider the case of the petitioner for compassionate appointment to any suitable post of Conductor/Typist/Attender/Shramik, in the interest of justice as per the Bread Winner Scheme notified in Circular No.PD-30/2000, dated 05.05.2000 and Circular No.PD-68/2000, dated 30.11.2000, duly taking into consideration the law laid down by the Apex Court in the judgments referred to and extracted above and also the view taken by this Court under similar circumstances, in accordance to law, within a period of six (06) weeks from the date of receipt of copy of this order, duly communicating the said decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SD/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. MD, TSRTC, HYDERABAD, Bus Bhavan, Mushirabad, Hyderabad-500624, Rep. by its Managing Director.
2. The Executive Director, T.S. R.I. C. Greater Hyderabad Zone,, JBS Complex, Picket, Secunderabad.

3. The Regional Manager, T.S. R.T. C. Hyderabad Region,, M.G.B.S, Hyderabad.
4. The Dy. Chief Personnel Manager, T.S. R.T. C., Greater Hyderabad Zone, JBS Complex, Picket, Secunderabad.
5. The Depot Manager, T.S. R.T. C. Dilsukhnagar Depot,, Dilsukhnagar, Hyderabad.
6. One CC to SRI A.G.SATYANARAYANA RAO, Advocate [OPUC]
7. One CC to SRI N.VASUDEVA REDDY(SC FOR RTC), Advocate [OPUC]
8. Two CD Copies
9. One Spare Copy

KSR
GJP
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HIGH COURT

DATED:06/12/2022

ORDER
WP.No.45814 of 2016



WRIT PETITION IS ALLOWED.

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