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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 797/2019**

**VARINDER KAUR**

..... Petitioner

Through: Mr. V. Elanchezhiyan, Adv. along  
with petitioner in person

versus

**JASVINDER KAUR BHATIA & ORS.**

..... Respondents

Through: Mr. Abinash Kumar Mishra, Mr.  
Gaurav Kr. Pander, Advs.

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***Date of Decision: 11<sup>th</sup> January, 2024***

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

**J U D G M E N T**

**MINI PUSHKARNA, J: (ORAL)**

1. Present contempt petition has been filed seeking initiation of contempt proceedings against the respondents on the premise that the respondents have willfully misinterpreted the order dated 28<sup>th</sup> October, 2015 passed by this Court in *W.P.(C) No. 10042/2015*. It is submitted that the respondents have erroneously made calculations and have wrongly submitted that the petitioner is entitled to only a sum of Rs. 1,68,537/- towards the arrears of benefits payable to her as per the recommendations of 6<sup>th</sup> Central Pay Commission ("6<sup>th</sup> CPC").

2. Learned counsel appearing for petitioner submits that the respondents have erred in calculating the arrears of 6<sup>th</sup> CPC payable to the petitioner. He submits that the petitioner is entitled to grade pay of Rs. 2400/-, whereas, the petitioner has been granted arrears of 6<sup>th</sup> CPC on the basis of calculation by



taking the grade pay of the petitioner as only Rs. 1900/-. Learned counsel appearing for the petitioner draws the attention of this Court to the representation dated 23<sup>rd</sup> April, 2019 filed by the petitioner with the Directorate of Education (“DOE”). In the said representation, the petitioner had given instance of six other employees, who according to the petitioner were similarly placed as the petitioner. It is submitted that the said six employees, whose details have been given in the representation dated 23<sup>rd</sup> April, 2019, were given the higher grade pay of Rs. 2400/- for the purposes of calculating the arrears of 6<sup>th</sup> CPC from the year 2006. However, the petitioner has not been granted the said relief, as has been granted to other similarly situated employees.

3. He further submits that the petitioner is entitled for calculation of her dues towards the 6<sup>th</sup> CPC on the basis of the Memorandum dated 01<sup>st</sup> December, 2005 issued by the respondent school, wherein the petitioner had been granted the UDC scale, i.e., Rs. 4000-100-6000 with a basic start of Rs. 4000/- w.e.f. 01<sup>st</sup> December, 2005.

4. Learned counsel for the petitioner also submits that the other issue which is to be decided by this Court is with regard to the time period for which the calculations have to be made for the purposes of payment of 6<sup>th</sup> CPC arrears to the petitioner. It is submitted that the respondent has made calculations towards arrears of 6<sup>th</sup> CPC till 14<sup>th</sup> February, 2018, whereas, the petitioner is entitled to be paid the arrears of 6<sup>th</sup> CPC till 30<sup>th</sup> April, 2021, i.e. the date of her superannuation.

5. He submits that the reliance by the respondent on the speaking order dated 08<sup>th</sup> April, 2019 is totally misplaced, as by the said speaking order passed by the DOE, the higher scale of the petitioner has been revoked.



However, no communication was ever made to the petitioner in that regard nor was any hearing granted to the petitioner before passing the speaking order dated 08<sup>th</sup> April, 2019. Thus, he submits that the respondent be directed to make fresh calculation on the basis of grade pay of Rs.2400/- for the purposes of payment of arrears towards 6<sup>th</sup> CPC to the petitioner.

6. Per contra, learned counsel appearing for the respondents submits that the petitioner had specifically given up her challenge with respect to giving effect to the Memorandum dated 01<sup>st</sup> December, 2005 at the time of passing of the final order dated 28<sup>th</sup> October, 2015 in *W.P.(C) 10042/2015*. He further submits that subsequently the matter was taken by the DOE and by speaking order dated 08<sup>th</sup> April, 2019, the DOE has held that the Memorandum dated 01<sup>st</sup> December, 2005 is not applicable to the petitioner.

7. It is further submitted that as per the speaking order dated 08<sup>th</sup> April, 2019, directions were given by the DOE to the respondent school to release the remaining amount of Rs. 1,68,537/- towards the arrears of 6<sup>th</sup> CPC payable to the petitioner. Learned counsel for the respondent school submits that the said amount of Rs. 1,68,537/- which was the balance amount payable to the petitioner towards the arrears of 6<sup>th</sup> CPC, has already been received by the petitioner.

8. Learned counsel for petitioner confirms the receipt of the aforesaid amount of Rs.1,68,537/- that has been released by the respondent school to the petitioner on the basis of the directions of the DOE vide order dated 08<sup>th</sup> April, 2019.

9. Learned counsel for respondent also draws the attention of this Court to the fact that the petitioner has already filed another comprehensive writ petition being *W.P.(C) 14346/2021*, wherein the petitioner has prayed for



release of the arrears, which also includes the prayer which is made before the present court with respect to release of further amounts towards the 6<sup>th</sup> CPC.

10. Learned counsel for the respondent also submits that the petitioner did not work from the period from 15<sup>th</sup> February, 2018 to 30<sup>th</sup> April, 2021, therefore, the calculation of arrears have been done by the respondents only till 2018. He further submits that since another petition of the petitioner being *SLP (Civil) No. 7737/2018* is pending in the Supreme Court and there exists a *status quo* order dated 16<sup>th</sup> May, 2018 passed by the Supreme Court in the said petition, therefore, the calculation of the arrears towards 6<sup>th</sup> CPC has been done only till the year 2018 and not till 2021.

11. This fact regarding the petitioner not having worked for the period from the year 2018 to 2021 is disputed by learned counsel for the petitioner. He submits that there was a stay granted by this Court against the transfer of the petitioner from Fateh Nagar branch of the school to Tilak Nagar branch of the school. Therefore, he submits that the aforesaid submission of learned counsel for the respondent is totally erroneous. He further submits that after the *status quo* order dated 16<sup>th</sup> May, 2018 was passed by the Supreme Court in *SLP No. 7737/2018*, the petitioner had sought to join the Fateh Nagar branch of the school, however, the respondent-school did not allow the petitioner to join.

12. This Court has heard learned counsel for the parties and has also perused the record.

13. The claim of the petitioner in the present proceedings is based upon the Memorandum dated 1<sup>st</sup> December, 2005, which reads as under:



**“MEMORANDUM**

*Mrs. Varinder Kaur, Clerk is hereby brought from LDC scale i.e. Rs. 3200-85-4900 to UDC scale i.e. Rs. 4000-100-6000 with a basic start of Rs. 4000/-with effect from 01st December, 2005 in the same capacity.*

*Other terms and conditions of service however will remain the same.*

(AVTAR SINGH HIT)  
CHAIRMAN”

14. Since the petitioner had disputes with the respondent school regarding payment of dues towards 6<sup>th</sup> CPC and also regarding non-implementation of the Memorandum dated 1<sup>st</sup> December, 2005, writ petition, being W.P.(C) 10042/2015 was filed by the petitioner.

15. At the outset, this Court notes that in order dated 28<sup>th</sup> October, 2015 passed in W.P.(C) 10042/2015, it is clearly recorded by a coordinate bench of this Court that the petitioner has given up her prayer as regards giving effect to the Memorandum dated 01<sup>st</sup> December, 2005. It is clearly recorded in the said order dated 28<sup>th</sup> October, 2015 that the petitioner shall make a detailed representation to the respondents with respect to the prayers as regards implementation of the Memorandum dated 01<sup>st</sup> December, 2005.

16. The order dated 28<sup>th</sup> October, 2015 passed in W.P.(C) 10042/2015 reads as under:

*“1. This writ petition has been filed by the petitioner seeking the following reliefs:*

*(a) Issue a writ in the nature of mandamus or any other appropriate writ or direction or order, directing the respondent No. 1 and 2 to implement the recommendation of Sixth Pay Commission in the terms of order dated 11.02.2009 issued by respondent No. 3 and direct them to pay the salary on the basis of recommendation of Sixth Pay Commission and*



*release the arrears within a timeframe, which this Hon'ble Court may deem fit in the facts and circumstances of the case.*

*(b) Direct the respondent No. 1 to give effect to memorandum dated 01.12.2005 whereby the petitioner was promoted to the post of UDC and direct them to release all consequential benefits including arrears of difference of salary;*

*(c) Direct the respondent No. 1 to release outstanding salary of the petitioner and give benefit of ACP and MACP as per Section 10 of the Delhi School Education Act and Rules 1973.*

*(d) Allow the cost of litigation.*

*2. Learned counsel for the petitioner, at the outset, states he would press the relief at serial No. (a) above only. Insofar as the prayers at serial Nos. (b) and (c) are concerned, he would make a detail representation to the respondent Nos. 1 and 2 in that regard. If that be so, the present petition is being considered for the prayer at serial No. (a) above.*

*3. Notice. Mr. Jasmeet Singh, Adv. accepts notice on behalf of the respondent Nos. 1 and 2. Mr. Nikhil Bhardwaj, Adv. accepts notice on behalf of the respondent No. 3.*

*4. Mr. Raj Kumar Sehrawat, learned counsel for the petitioner and Mr. Jasmeet Singh, learned counsel for the respondent Nos. 1 and 2 agree that this writ petition can be disposed of, in terms of the order passed by the Division Bench in EFA (OS) 7/2014, Shambhu Nath Das & Ors. Vs. Directors of Education, Govt. of NCT & Ors., wherein, a similar issue arose with regard to the implementation of the Sixth Pay Commission and the payment of arrears thereof.*

*5. I note, in the said order in EFA (OS) 7/2014, this Court has noted the contents of the affidavit filed on behalf of the respondent No. 2. The same are reproduced as under:*

*"3. That Guru Harkrishan Public School (New Delhi) Society shall clear/settle all the arrears of Sixth Pay Commission in all its twelve Schools in five equal instalments as under:-*

*i) 30.07.2015 ii) 31.10.2015 iii) 31.01.2016 iv) 30.06.2016 v) 31.10.2016*

*4. In addition, the Guru Harkrishan Public School (New Delhi) Society shall make a corpus fund of Rs. 2.5 crores which will be kept for utilization of the staff of any of the twelve Guru Harkrishan Public School for their emergent needs. A Committee comprising of Mr. Rajiv Tyagi, Advocate, Mr. Jasmeet Singh, Advocate and a nominee of DSGMC will scrutinize the need of the applicant and direct disbursement of the amounts from this fund subject to the*



*maximum available amount standing to the credit of that employee on account of arrears of Sixth Pay Commission.*

*5. That Guru Harkrishan Public School (New Delhi) Society and the DSGMC shall remain bound by their undertaking as given above”.*

*6. Mr. Jasmeet Singh, learned counsel for the respondent Nos. 1 and 2 states that the order passed by the Division Bench in EFA (OS) 7/2014 was sought to be implemented in favour of the petitioner as well and a cheque for Rs. 86,525/- was tendered to the petitioner, but was not accepted by her.*

*7. Learned counsel for the petitioner disputes this position. Be that as it may, Mr. Jasmeet Singh, Adv. states that the amount of Rs. 86,525/- shall be credited in the account of the petitioner within two days. He would also state that the respondent Nos. 1 and 2 shall strictly abide by the schedule as noted by the Division Bench in EFA (OS) 7/2014. The said statement is taken on record. The respondent Nos. 1 and 2 to implement the recommendation of the Sixth Pay Commission and pay arrears thereof to the petitioner, in terms of the schedule as noted above.*

*8. The petition is disposed of.”*

17. Subsequently, by order dated 15<sup>th</sup> March, 2017 passed in *CONT.CAS (C) 1383/2016*, this Court had directed the Deputy Director of the concerned zone of the DOE to decide the dispute with respect to the dues payable to the petitioner, after giving due opportunity of hearing to both the petitioner as well as the representatives of the respondent school. The order dated 15<sup>th</sup> March, 2017 passed in *CONT.CAS (C) 1383/2016*, reads as under:

*“Since there is a dispute between the parties with regard to the amounts due and payable as to the first two instalments in accordance with the order dated 28th October, 2015 passed in W.P.(C) No.10042/2015, wherein the respondent-school undertook to abide by the schedule of payment stipulated in EFA (OS) No.7/2014, this Court directs the Deputy Director of the concerned zone to decide the said dispute after giving an opportunity of hearing to both the petitioner as well as the representative of the respondent-school. The counsel for the petitioner as well as the respondent-school undertake to this Court that they shall abide by the decision of the concerned Deputy Director, and if any payment*



*has to be made, the same shall be paid within a period of four weeks from the date of decision.*

*Learned counsel for the respondent-school states that the balance three instalments shall be paid to the petitioner in accordance with the 6th Pay Commission, within a period of six weeks.*

*The statements and assurances/undertakings given by learned counsel for the respondents are accepted by this Court and the respondents are held bound by the same.*

*In view of the aforesaid, present contempt petition stands disposed of.*

*Order dasti."*

18. Pursuant to the aforesaid order dated 15<sup>th</sup> March, 2017, the DOE passed a speaking order dated 08<sup>th</sup> April, 2019, wherein the DOE held that the Memorandum dated 01<sup>st</sup> December, 2005 was not applicable to the petitioner and that the petitioner was entitled for payment of arrears on the basis of grade pay of LDC w.e.f. 01<sup>st</sup> January, 2006 onwards. The relevant portion of the speaking order dated 08<sup>th</sup> April, 2019 passed by the DOE is reproduced as below:

*"xxx xxx xxx*

***i. Applicability of implementation of Memorandum dated 1<sup>st</sup> December, 2005 to the petitioner:***

*Before completion of 12 year of service in the pay scale of LDC, GHPS Memorandum dated 01.12.2005 brought Mrs. Varinder Kaur, LDC i.e. Rs. 3200-85-4900 to UDC Rs. 4000-100-6000 with a basic start of Rs. 4000/- with effect from 1<sup>st</sup> December, 2005 in the same capacity, which does not amount to promotion of Mrs. Varinder Kaur on the post of UDC. As per the ACP scheme, her first 1<sup>st</sup> ACP was due after 12 year of regular service i.e. 10<sup>th</sup> February, 2009. There is no such terminology such as "brought up to the higher scale" nor there any provision in DSEAR, 1973. Further, for promotion to a post, a proper DPC has to be held as per the provision of DSEAR, 1973. No such record has been furnished by both, the petitioner and the Respondent School to show that a DPC for promotion was held in year 2005. Hence, it cannot be considered that Mrs. Varinder Kaur was promoted on the post of UDC on 1<sup>st</sup> December, 2005. Further,more, there is*



*nothing on record which shows that she has claimed to give effect to Memorandum dated 01.12.2005 till year 2014. And for the first time Mrs. Varinder Kaur, petitioner presented her claim through WPC 10042/2015 which in fact, was also not pressed before the Hon'ble Court as apparent from order dated 28.10.2015. Thus, the Respondent School claim that her ACP was due after 12 year of regular service i.e. 10<sup>th</sup> February, 2009 and due amount of arrears from 01.01.2006 is to be calculated as per pay of LDC and not as per grade pay of UDC hold merit. Hence, calculation of arrear amount due to her is to be calculated in the grade pay of LDC w.e.f. 01.01.2006 to 09.02.2009 and as her 1<sup>st</sup> ACP was due on 10.02.2009, thus w.e.f. 10.02.2009 the calculation of due arrear amount is to be done in the grade pay of UDC.*

***ii. On calculations of arrears 01.01.2006 to 30.04.2017 instead of 01.01.2006 to 30.04.2014:***

*The DoE vide circular dated 15.10.2008 directed all the private unaided recognized School to implement the 6<sup>th</sup> pay commission recommendations-Fixation of pay and payment of arrears in accordance with circular no. 30-03(17)/Cood/Cir/2008 dated 22.09.2008 vide which it has been implemented in r/o employees of Government Schools. Further vide order dated 11.02.2009 the DoE issued the guidelines for implementation of the recommendations of 6<sup>th</sup> Central Pay Commission w.e.f. the academic session 2008-09 and to meet the financial requirement arising therefrom.*

*The pay and allowances arrears dues on account of 6<sup>th</sup> pay commission recommendation's with respect to Mrs. Varinder Kaur has accrued w.e.f 01.01.2006 in terms of circular dated 15.10.2008 and order dated 11.02.2009 and major part of her dues is still pending.*

*The Hon'ble High Court vide letter dated 28.12.2015 disposed of the W.P. (C ) No. 10042/2015; titled as Varinder Kaur Vs. School Management of Guru Harkrishan Public School and Ors. directing Respondent school and managing committee of Guru Harkrishan Public School to implement the recommendation of 6<sup>th</sup> pay commission and pay arrears thereof to the petitioner. Since there is a dispute between the parties with regard to the amounts due and payable, hence, subsequently, vide order dated 15.03.2017 the Hon'ble Court in Cont. Case. No. 1383/2016 directed that the Deputy Director of the concerned Zone to decide the said dispute after giving an opportunity of hearing to both the Petitioner as well as the Representative of the respondent school. From perusal of the order of Hon'ble High Court there is no such direction that the*



*calculation of the arrears regarding Mrs. Varinder Kaur, LDC is to be done w.e.f. 01.01.2006 to 30.04.2014 does not hold merit.*

*xxx xxx xxx”*

19. Subsequently, the petitioner also made a representation dated 23<sup>rd</sup> April, 2019 to the DOE requesting for giving effect to the Memorandum dated 01<sup>st</sup> December, 2005 and praying for release of arrears of 6<sup>th</sup> pay commission in accordance with the grade pay as stated in the Memorandum dated 01<sup>st</sup> December, 2005.

20. This Court notes that the petitioner has filed a fresh writ petition being *W.P.(C) 14346/2021*, which is pending before this Court. The said petition has been filed raising the claim in respect of the time period for which the petitioner is entitled for payment of arrears of 6<sup>th</sup> and 7<sup>th</sup> Pay Commission.

21. In the said writ petition, the petitioner has made the following prayers:

*“a. to please issue a writ of mandamus or any other appropriate writ to the Respondent No. 1 thereby to issue a writ of mandamus or any other appropriate writ to the respondent thereby to direct them to make immediate payments of salary arrears, Leave encashments and gratuity due to the petitioner.;*

*AND/OR*

*Pass any other order that this hon'ble court may deem fit and proper in the facts and circumstances of this case.”*

22. In view of the aforesaid, it is clear that the petitioner has already filed a substantive writ petition wherein the petitioner has prayed for release of her salary, arrears and other amounts, which are due and payable to her.

23. This Court also records that the prayer of the petitioner for arrears of 6<sup>th</sup> CPC on the basis of grade pay of Rs.2400/- cannot be granted by this Court, for the reason that by speaking order dated 08<sup>th</sup> April, 2019, the DOE has held that the Memorandum dated 01<sup>st</sup> December, 2005 is not applicable



to the petitioner and that the petitioner is entitled for payment of 6<sup>th</sup> CPC only on the basis of pay scale of LDC.

24. In the absence of any challenge by the petitioner to the speaking order dated 08<sup>th</sup> April, 2019, this Court cannot grant any relief to the petitioner in the present proceedings qua the claim of the petitioner for release of her arrears on the basis of higher pay scale in terms of Memorandum dated 01<sup>st</sup> December, 2005.

25. As regards the prayer of the petitioner with respect to the payment of arrears of 6<sup>th</sup> CPC till 2021 instead of the year 2018, the said relief also cannot be granted to the petitioner in the present proceedings, as substantive dispute with respect to entitlement of the petitioner is already pending in *W.P.(C) 14346/2021*. Further, this Court also notes that the petition of the petitioner being *SLP No. 7737/2018* is already pending in the Supreme Court.

26. This Court also notes that pursuant to the speaking order dated 08<sup>th</sup> April, 2019, in which directions were given by the DOE to the respondent school to release the balance amount of Rs. 1,68,537/-, the respondent has already complied with the said directions and the petitioner has already been released all the amounts due and payable by the respondent school, as calculated by DOE .

27. Law is well settled that in contempt proceedings, a court would only be concerned with implementation of the original order or judgment, and that any other incidental or ancillary directions cannot be given in exercise of jurisdiction in contempt proceedings. Thus, Supreme Court in the case of *V. Senthur and Another Versus M. Vijayakumar, IAS, Secretary, Tamil Nadu Public Service Commission and Another, 2021 SCC OnLine SC 846*



has held as follows:

“xxx xxx xxx

*15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.*

xxx xxx xxx”

28. Likewise, holding that only such directions which are explicit in a judgment or order or are plainly self-evident, ought to be taken into account while deciding the issue of any willful disobedience or violation, Supreme Court in the case of ***Sudhir Vasudeva Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Others Versus M. George Ravishekaran and Others, (2014) 3 SCC 373*** has held as follows:

“xxx xxx xxx

*19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in*



other corrective jurisdictions like review or appeal is not trenchd upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703] , V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907] , Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami [(2008) 5 SCC 339] and Union of India v. Subedar Devassy PV [(2006) 1 SCC 613].

xxx xxx xxx”

29. Similarly, holding that civil contempt would not lie if the order alleged to have been disobeyed, provides scope for reasonable or rationale interpretation. Thus, Supreme Court in the case of **Dinesh Kumar Gupta Versus United India Insurance Company Limited and Others, (2010) 12 SCC 770** has held as follows:

“xxx xxx xxx

23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

xxx xxx xxx”

30. In view of the aforesaid, no further orders are required to be passed in the present contempt petition. However, the petitioner is granted liberty to



challenge the speaking order dated 08<sup>th</sup> April, 2019, wherein the DOE has held that the Memorandum dated 01<sup>st</sup> December, 2005 is not applicable to the petitioner. This liberty is granted in view of the fact that the whole claim of the petitioner is based upon the Memorandum dated 01<sup>st</sup> December, 2005.

31. Liberty is also granted to the respondents to raise all objections as are available in law.

32. With the aforesaid liberty, the present contempt petition is disposed of. The notice of contempt is discharged.

**(MINI PUSHKARNA)  
JUDGE**

**JANUARY 11, 2024**

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