



W.P.Nos.2971 and 19182 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 31.01.2025

Orders pronounced on : **25.02.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.2971 and 19182 of 2009
and M.P.Nos.1 of 2010 and 1 of 2011 in W.P.No.19182 of 2009

W.P.No.2971 of 2009:-

Caterpillar India Private Ltd.,
Machines Division,
Melnallathur,
Thiruvallur - 602 004,
Rep. by its Head - Human Services

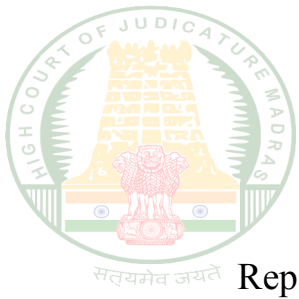
.. Petitioner

Versus

1. The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.

2. A.Srinivasan

3. Management of
Hindustan Motors Ltd.,
Thiruvallur - 602 004,



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Rep. by its Senior Vice President

.. Respondents

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W.P.No.19182 of 2009:-

A. Srinivasan

.. Petitioner

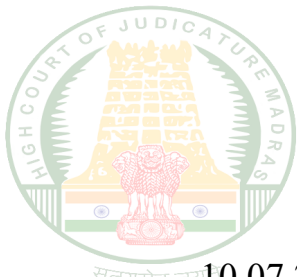
Versus

1. The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.
2. Caterpillar India Pvt. Ltd.,
Machines Division,
rep. by its Head Human Services,
Melnallathur, Thiruvallore - 602 004.
3. Management of Hindustan Motors Ltd.,
Rep. by its Senior Vice President,
Thiruvallur - 602 004.

.. Respondents

Prayer in W.P.No.2971 of 2009 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.2 of 1992 and quash the award, dated 10.07.2008.

Prayer in W.P.No.19182 of 2009 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari after calling for the records relating to the award of the 1st respondent Labour Court, dated



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10.07.2008 in I.D.No.2/92, to quash the same and to award full backwages together with continuity of service and other attendant benefits.

In W.P.No.2971 of 2009:-

For Petitioner : Mr.G.Anandakrishnan

For Respondents : R1 - Labour Court

: Mr.S.Sathish Kumar,
for M/s.Row & Reddy, for R2

: No appearance for R3

In W.P.No.19182 of 2009:-

For Petitioner : Mr.S.Sathish Kumar,
for M/s.Row & Reddy

For Respondents : R1 - Labour Court

: Mr.G.Anandakrishnan, for R2

: No appearance for R3

COMMON ORDER

A. Prelude:

The name of the management in this case is Caterpillar India Private



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Limited. The workman, in this case, was terminated from service on 01.08.1991. Today, in the year 2025, when the case is decided, this Court could hear the vociferous objections from the Caterpillars, '*We are not this slow; we become butterflies and fly off*'. Neither this Court nor the parties to the litigation can have any valid arguments for the objections, and sustaining the objections, I proceed to decide the matter finally.

B. The Writ Petitions:

2. These two Writ Petitions challenge the award of the Principal Labour Court, Chennai, dated 10.07.2008. By this award, the Labour Court disposed of the Claim Petition filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D Act'). While determining that the non-employment was unjustified, the Labour Court awarded compensation of Rs.2,00,000/- in lieu of all claims for reinstatement, back wages, and other benefits. Aggrieved by the award, both the management and the workman are before this Court.



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C. The case of the workman:

3. The case of the workman is that he was appointed on 01.08.1991 as Canteen Supervisor. Although his designation was stated as Supervisor, his job was clerical in nature. During this time, he received a memo, dated 07.12.1987, alleging insubordination and negligence. He was also placed under suspension pending inquiry and faced a punishment of 10 days suspension. Since he had not been paid his salary for the interim period, he filed C.P.No.644 of 1988, claiming arrears of salary. He also filed C.P.No.132 of 1991, claiming the increment due. Additionally, another memorandum dated 27.12.1990 was issued against the workman stating that on 21.12.1990, during the first shift at approximately 11:05 A.M, the workman misbehaved with a canteen committee member. In his explanation dated 03.01.1991, the petitioner denied the charges. An inquiry was subsequently conducted; however, it was neither fair nor proper. Once again, he was suspended on 10.01.1991. Ultimately, without imposing any



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punishment, the management terminated the petitioner's services by an order dated 01.08.1991, which is unsustainable in law. His last drawn salary was Rs.3,791/- per month. He raised a dispute. Conciliation failed. Therefore, he filed a Claim Petition seeking reinstatement with continuity of service, back wages, and all other attendant benefits.

D. The case of the management:

4. The management's position is that the workman was appointed as Canteen Supervisor, and at the time of his termination, his salary was Rs.3,891/- per month. He was directly responsible for the entire operation during the second shift, which included overseeing the canteen cooks and workers. He was also responsible for granting leave and permissions to workers on that shift. Therefore, he does not qualify as a workman under the definition in Section 2(s) of the I.D Act. Both Computation Petitions filed by the workman, C.P.Nos.644 of 1988 and 132 of 1991, lack merit and are based on incorrect facts. On 21.12.1990, he committed certain acts of



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misconduct. For one of the misconduct incidents, he received a show-cause notice. The workman's explanation was deemed unsatisfactory, and the management conducted an inquiry in a fair and proper manner in accordance with the principles of natural justice. The Enquiry Officer submitted his findings, concluding that the charges were proven. However, only in order to avoid the stigma, the workman was simply terminated from service. The same is in accordance with the terms of the appointment.

E. The findings of the Labour Court:

5. Based on the aforementioned pleadings, the Labour Court commenced the enquiry. The workman was examined as *W.W.1*, and *Exs.W-1* to *W-22* were marked. On behalf of the management, *C.K.Narayanan* was examined as *M.W.1*, and *Exs.M-1* to *M-30* were marked. The Labour Court determined that the predominant duties of the workman, according to *Ex.W-2*, were clerical in nature. Only the Senior Catering Officer and the Canteen in-charge were actually empowered to take

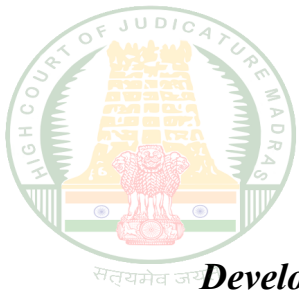


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action and administer the employees of the canteen; therefore, it held that the petitioner was a workman. Subsequently, the Labour Court found that even though the management conducted an enquiry, it chose not to impose a punishment and instead opted to pass an order of termination simpliciter. Considering the order of termination simpliciter, the Labour Court concluded that it casts stigma, and it was the misconduct that formed the foundation for the exercise of power. Consequently, it found that the non-employment was unjustified.

5.1. Considering that the workman was employed for six years, along with the overall facts and circumstances of the case, the Labour Court found that in this instance, even though the workman reached the age of superannuation while the Industrial Dispute was still pending disposal, it ordered compensation instead of reinstatement with back wages. The compensation was calculated according to the judgment of the Hon'ble Supreme Court of India in ***O.P. Bhandari Vs. Indian Tourism***



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Development Corporation Ltd., and Ors.¹ awarding a total sum of Rs.
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2,00,000/-. Both parties are aggrieved by this decision and are now before this Court.

F. The Submissions:

6. *Mr.G.Anandakrishnan*, learned Counsel for the management, submits that in this case, the workman, at the time of termination, was receiving a salary of Rs. 3,891/-. A review of **Ex.M-1** indicates that the petitioner was assessing the discipline of his subordinates. Examination of **Ex.M-2** reveals that the workman was responsible for appraising his subordinates. **Ex.M-3** illustrates the work output allotment which was also assigned by the petitioner. If any other workman had misbehaved, he filed a complaint with the higher authorities as documented in **Ex.M-4**. Under **Ex.M-5**, there is again an assessment made by the petitioner. Thus, in the second shift, he was the higher authority in the canteen and was empowered to suspend any workman. Even requests from the workman were handled

¹ (1986) 4 SCC 337



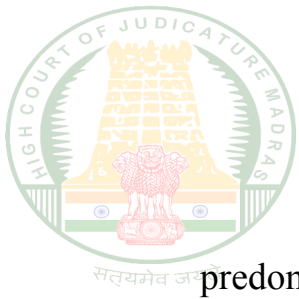
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solely by him. Therefore, the workman's position is predominantly supervisory and managerial in nature; thus, the Labour Court erred in designating the petitioner as a workman.

6.1. On the merits, the management is entitled to relegate the misconduct to the background and issue a termination order simpliciter, as was done in this case. The Labour Court erred in deeming this punitive. Furthermore, when the Labour Court fixed the compensation, it set an amount exceeding 3.33 years of salary according to the judgment in **O.P. Bhandari's** case (cited *above*), making the sum of Rs. 2,00,000/- excessive. This amount of Rs. 2,00,000/- was already deposited by the petitioner Company on 13.05.2013 and has been invested in an interest-bearing deposit, allowing the workman to derive interest from it periodically.

6.2. Per *contra*, *Mr.S.Sathish Kumar*, learned Counsel for the workman, submits that it is evident that the work of the workman is

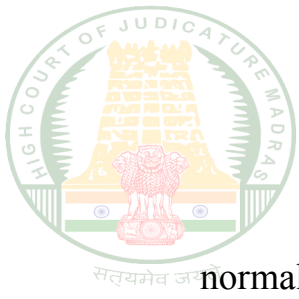


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predominantly clerical in nature. Even according to the management's documents, it is clear that there is a canteen in charge, who held a supervisory and managerial role. Under him, there was also a Senior Catering Officer, who served as a Supervisor and assisted the canteen in charge. The workman had no authority regarding granting leave or taking disciplinary action against others. Merely because it is his incidental duty to write appraisals, and that too at the direction of his higher officer, it constitutes only a minor part of his daily activities, which is also clerical in nature. He acted according to the instructions of his superiors. Therefore, the Labour Court correctly concluded that the petitioner is a workman.

6.3. The impugned termination order clearly casts stigma and is punitive in nature. Therefore, by leaving the Domestic Enquiry halfway through and holding that the charges were proven, the termination order was issued, and consequently, misconduct forms the foundation of this order, which casts stigma. Thus, the non-employment is wholly unjustified. In



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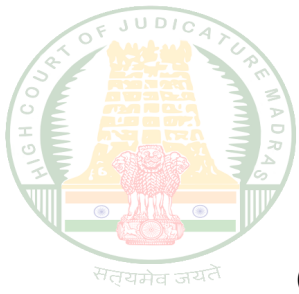
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normal circumstances, the Labour Court should not have awarded compensation, as this is not a case of complete loss of confidence. It is merely an incident of alleged insubordination. The workman was victimized simply because there was no salt in a particular vegetable. As the supervisor of the canteen rather than the cook, he should not face a casual punishment for such a trivial charge. Therefore, the Labour Court should have ordered the workman be reinstated into service until the date of his superannuation and should have granted the benefits. Regarding compensation, the amount would be neither fair nor adequate, as it is on the lower side. Therefore, that portion of the Labour Court's award has to be interfered by this Court.

6.4. In support of his submissions, the learned Counsel will rely on the following judgments of the Hon'ble Supreme Court of India:

(i) ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.***²;

² (2013) 10 SCC 324



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(ii) *Colour-Chem Ltd. Vs. A.L.Alaspurkar and Ors.*³;

(iii) *U.P. State Brassware Corporation Ltd. and Anr. Vs. Uday*

*Narain Pandey*⁴;

(iv) *Anand Regional Coop. Oil Seedsgrowers' Union Ltd. Vs.*

*Shaileshkumar Harshadbhai Shah*⁵;

(v) *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National*

*Centre for Basic Sciences, Calcutta and Ors.*⁶;

(vi) *Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur*

*Nagar*⁷;

(vii) *Rajinder Kumar Kindra Vs. Delhi Administration through*

*Secretary (Labour) and Ors.*⁸;

(viii) *Ananda Bazar Patrika (P) Ltd. Vs. The Workmen*⁹;

(ix) *Management of Hindustan Motors Ltd. Vs. Lakshmiah and*

3 (1998) 3 SCC 192

4 (2006) 1 SCC 479

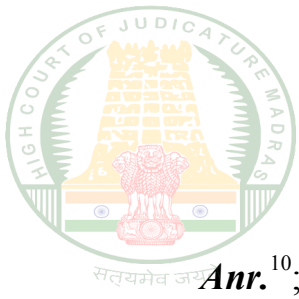
5 (2006) 6 SCC 548

6 1999 SCC (L&S) 596

7 (2015) 9 SCC 345

8 (1984) 4 SCC 635

9 1970 (3) SCC 248



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*Anr.*¹⁰;

(x) *Depot Manager, Andhra Pradesh State Road Transport*

*Corporation, Hyderabad II Depot, Hyderabad Vs. K.Jogi Reddy and Anr.*¹¹

and

(xi) *Assembly of God, Hospital and Research Centre Vs. First*

*Industrial Tribunal, West Bengal*¹².

G. The Discussion:

7. I have considered the rival submissions made on either side and perused the material records of the case.

7.1. The first question to be resolved in this case is whether *A.Srinivasan*, the Canteen Supervisor, qualifies as a workman under the definition provided in Section 2(s) of the I.D Act. The law is firmly established on this matter; while determining this question, the Court will

¹⁰ 2002 (2) L.L.N. 725

¹¹ 2009 (4) L.L.N. 165

¹² 2002 (4) L.L.N. 721



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not be swayed by the nomenclature or designation of the workman. It is the daily activities and duties that must be considered. A person predominantly employed in clerical work may also incidentally perform one or two supervisory or managerial tasks, and this will not alter the fundamental position. Hence, the Court must focus on the primary nature of the employee's role. With this in mind, upon analyzing the oral and documentary evidence in this case, it is apparent that according to **Ex.W-2**, the terms and conditions of employment detail a checklist for supervisors, enumerating a total of 45 duties of the workman.

7.2. It can be seen that the duties involve reading the logbook, switching off the water coolers, checking the sales coupons, and entering them into the register, switching on the water coolers, conducting quality checks of the curd and green peas, washing the tiffin plates and tumblers, and assessing the quantity and quality of food items, including chapati dough and oil, among others. Similarly, it is his duty to check whether the



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counter staff have reported for duty at the relevant time. A complete review of all 45 duties shows that the Canteen Supervisor's designation implies that he supervises various activities in the Canteen, but does not position him as the Manager of the Canteen or as the administrative head of the employees. Therefore, even though a minor aspect may involve giving appraisals or ensuring the workers are present at their designated work spots, these actions are primarily to facilitate the smooth operation of the Canteen. He is required to report any misconduct or issues related to the workers to the two higher officers, namely the Senior Catering Assistant and the Catering Incharge, who hold supervisory and managerial roles. Therefore, when the Labour Court considered both the oral and documentary evidence in detail and concluded that the employee in question qualifies as a workman under Section 2(s) of the I.D Act, there is no compelling reason for this Court to overturn the finding or to assert that the finding is perverse or incorrect.

7.3. In this case, the management argued that although there was



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misconduct and a Domestic Enquiry conducted, it ultimately resulted in a termination simpliciter without any stigma attached. The management does not claim that the termination was punitive and plead that they will still prove the charges before the Labour Court if the Domestic Enquiry was neither fair nor proper. Therefore, the Labour Court correctly addressed the issue of whether the non-employment is justified. In this case, the impugned order is extracted as follows:-

"We write concerning the chargesheet dt.27th December 1990 issued to you.

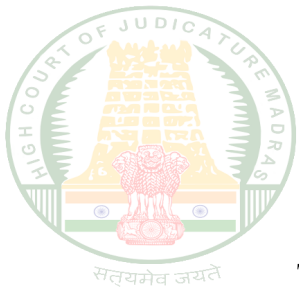
As you are aware, a domestic enquiry was conducted in to the said charges. The charges against you have been conclusively proved in the domestic enquiry and the said charges being grave in nature, entitles the Management to dismiss your services.

However, with a view to avoid any stigma being attached to your career and taking a lenient view in the matter, we will be terminating your services by invoking Clause No.5 of the Contract of Employment which is reproduced below:-

"The Employer/Employee shall have the right to terminate the services after formal confirmation on one month's basic pay and dearness allowance in lieu of notice."

However, a separate order will be issued to this effect."

(Emphasis supplied)



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Thus, it can be seen that it expressly caused stigma. This order is issued at the time of termination of service.

7.4. The allegations made in the order itself, along with the finding that the charges against the workman have been proven, indicate that merely adding the phrase 'to avoid any stigma being attached' does not eliminate the stigma referenced in the previous paragraph of the impugned order. Therefore, the impugned order cannot be classified as a termination simpliciter. Additionally, the impugned order identifies the misconduct as the basis for the misuse. This is echoed in the management's counter-affidavit. In paragraph No.7 of the counter-statement, the management stated the following:-

"7....Based on the enquiry officer's report the management informed to the petitioner that though they are entitled under law to take action against the enquiry officer's report, they are not doing so but on the other hand invoking the terms of appointment terminated the petitioner's services by issuing him one month salary in lieu of notice."



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7.5. Again, in paragraph No.9, the management stated as follows:-

"9....The respondent submits that it is not true to state that the management gave up the domestic enquiry and the findings of the enquiry officer. But on the other hand, with a view to give opportunity to the petitioner to atleast reform himself in future and not to cast any stigma on his career the respondent did not terminate the petitioner based on the findings of the enquiry officer, but on the other hand terminated his services by invoking the terms of appointment."

Thus, the pleading also emphasizes that it is only the Enquiry Officer's report that forms the basis of the exercise of power. Therefore, the misconduct serves as the foundation of the act.

7.6. When misconduct forms the basis of the act, the termination order is punitive. Management appointed the Enquiry Officer, who determined that the charges were substantiated. However, this was not communicated to the workman, and no further explanation was sought. The management used the Enquiry Report as a basis for its conclusion, which was not presented to the workman. Therefore, the principles of natural justice were violated. The management did not argue that the termination was punitive; thus, it was not



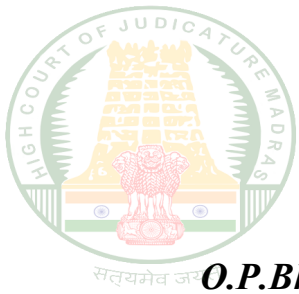
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allowed to introduce evidence regarding the merits of the charges before the Labour Court. Consequently, the termination is deemed unjustified. The findings of the Labour Court are valid.

7.7. The next question to consider is what relief can be granted to the workman. The Labour Court noted that by the year 2008, the workman had reached the age of superannuation. It evaluated the total period of the workman's employment with the present management from 17.08.1985 to 01.08.1991, amounting to about six years, while the litigation period was longer. Thus, considering the overall facts and circumstances of the case, the Labour Court determined that it was appropriate to award compensation in lieu of reinstatement with back-wages, and no objection can reasonably be made to this position.

7.8. While considering the quantum, the Labour Court rightly took into account the decision of the Hon'ble Supreme Court of India in



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calculated the damages at Rs.2,00,000/-. In this regard, the Hon'ble Supreme Court of India in ***Workmen Vs. Bharat Fritz Werner Private Limited and Anr.***¹³ held that the Company can also be liable for the loss of future employment, etc. Even though a slight addition of Rs. 40,000/- was made by the Labour Court, that amount was still on the lower side. Furthermore, the management chose not to comply with the award; instead, it opted to delay the deposit of the award amount.

7.9. Now, we are in the year 2025. It is true that the workman was receiving interest from the sum of Rs.2,00,000/- which was deposited before the Labour Court and reinvested in the bank. However, it must be considered that the principle upheld by the Hon'ble Supreme Court of India is that the workman should be able to invest the compensation amount and receive at least 50% of the last drawn wages. Therefore, taking this into account today, to receive interest roughly amounting to Rs.2,000/-, the

¹³ (1990) 3 SCC 565



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management should pay at least Rs.4,00,000/-. Thus, keeping this in mind and considering the overall facts and circumstances of the case, the compensation is increased from Rs.2,00,000/- to Rs.4,00,000/-.

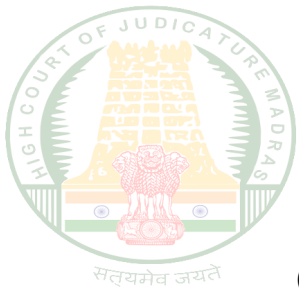
H. The Result:

8. In the result, these Writ Petitions are disposed of on the following terms:-

(i) The award of the Labour Court made in I.D. No. 2 of 2012, dated 10.07.2008, is upheld in as much as it declares that the non-employment of the workman is unjustified and grants compensation in lieu of reinstatement with back wages.

(ii) The Labour Court's award is, however, interfered with regard to the quantum of compensation, which is increased from Rs.2,00,000/- to Rs.4,00,000/-;

(iii) The worker will be entitled to withdraw the amount already deposited by the management, along with the accrued interest;



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(iv) It is stated that as of January 21, 2025, a sum of Rs.2,01,424/- was available along with accrued interest;

(v) The management shall pay the remaining compensation of Rs.2,00,000/- within eight weeks from the date of receipt of a web copy of this order, without waiting for a certified copy of the same;

(vi) There shall be no order as to costs. The connected miscellaneous petitions are closed.

25.02.2025

Neutral Citation : yes
grs

To

1. The Presiding Officer,
Principal Labour Court,
Chennai - 600 104.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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