

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH: GULESTAN BUILDING

ORIGINAL APPLICATION No.1249/1993

WEDNESDAY, THIS THE 7TH DAY OF JULY, 1999

SHRI JUSTICE S. VENKATARAMAN .. VICE CHAIRMAN

SHRI S.K. GHOSAL .. MEMBER (A)

Ishverlal J. Naik, aged 61 years,
Retired Lecturer of
Govt. College, Daman,
r/a Parkota Street,
P.O.: Daman - 396 210.

Applicant

(In Person)

Vs.

1. Dinkerrai Manchharam Joshi,
S/o Manchhram Jamiyetram Joshi,
R/a Village : Bhimpore,
the Director of Accounts in U.T.
of Daman and Diu at :
Moti Daman - 396 220.
2. The Principal,
Govt. College, Daman,
P.O.: Nani Daman - 396 210.
3. The Administrator,
Union Territory of Daman & Diu,
Administrator's Secretariat,
P.O. : Daman 396 220.
4. Union of India, through :
The Secretary,
Ministry of Home Affairs,
Central Secretariat, North Block,
New Delhi.

Respondents

(By Standing Counsel Shri V.S. Masurkar)

O R D E R

Shri S.K. Ghosal, Member (A) :

The applicant was appointed as a Lecturer with

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effect from 12.5.1966 in the Government College, Daman, in the scale of pay of Rs.400-950/-. In terms of the recommendation of the 3rd Pay Commission, his pay was fixed in the scale of Rs.700-1300/- with effect from 1.1.1973. This was based on his option dated 3.1.1975. Thereafter, the Ministry of Education and Social Welfare (Department of Education), Government of India, which is the controlling authority for the Education department of the Union Territory of the then Goa, Daman and Diu, communicated the orders of the Ministry through the letter dated 2.8.1978, available at Annexure-A1, conveying the sanction of the President, in supersession of all earlier orders on the subject, to the extension of ^{AD revised} scales of pay for the Teachers in the Government and non-Government Colleges. Those scales were based on the recommendations of the University Grants Commission (UGC for short) and were to take effect from 1.1.¹⁹⁷⁸~~1978~~. However, the applicant specifically indicated his option through his letter dated 31.3.1979 to the effect that he elected to continue on the existing Government pay scale of Rs.700-1300/- and he specifically declared therein that he did not want the UGC scale. Thereafter, when the revised scales of pay based on the recommendations of the 4th Pay Commission came into effect from 1.1.1986, the pay of

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the applicant was fixed in the scale of Rs.2200-4000/- . Again, this was based specifically on his option dated 8.4.1987 for the 4th Pay Commission scale of pay. The Collector and Secretary, Education, Union Territory of Daman and Diu, in his circular dated 29.12.1990 at Annexure-A2, conveyed the decision to implement the new UGC ~~and~~ scales of pay with effect from 1.1.1986 as per the decision of the Government of India for the teaching personnel of Government College, Daman, who had ^{earlier} vacated the UGC scales of pay with effect from 1.1.1986. The same circular states that all the teaching personnel mentioned above are allowed to exercise a fresh option either to be placed in the new UGC scales of pay or to continue in the existing 4th Pay Commission scales of pay. The applicant had already retired voluntarily in October, 1989. However, it is seen that the Secretary, Education, Daman and Diu, was addressed by the Office of the Secretariat of the Administration⁴⁹, Daman and Diu, on 6.8.1992 to obtain a fresh option from the applicant in his capacity as an Ex-Lecturer, Government College, Daman, in order to consider his request for the grant of ^{Re 42} selection grade. Accordingly, the Assistant Accounts Officer, Collectorate, Daman, forwarded a copy of that letter to the applicant as ⁴⁹ an Ex-Lecturer, Government College, Daman, to submit

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fresh option as desired by the Assistant Secretary,
Administrator's Secretariat, Daman. Copies of these two
communications are available at Annexure-A3. Accordingly,
the applicant conveyed to the Collector and Secretary-
Education, Administration of Daman and Diu, his option
for the UGC scale of pay from the date the said pay scale
was made applicable to the Lecturers of the Government
College, Daman. After some correspondence on that subject,
the applicant submitted a representation to the Collector
and Secretary-Education, Union Territory of Daman and
Diu, dated 27.1.1993, claiming that since he was similarly
placed as other Lecturers who were junior to him and
since those juniors had already been placed in the Selection
grade scale on 4.11.1991, based on their fresh option for
the UGC scale in pursuance of the order at Annexure-A2,
he was also entitled to be placed in the Selection grade
scale with effect from 1.1.1986; because on 1.1.1986 and
also on 1.1.1987 and 1.1.1988, he was in actual service
as a Lecturer in the Government College, Daman. There-
after, on behalf of the Administrator, Daman and Diu,
the Assistant Secretary, Administrator's Secretariat,
passed an order dated 10/12-2-1993 at Annexure-A10 to
the effect that in pursuance of the Government of India's
decision introducing the UGC scales of pay for teaching

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personnel of the Government College, Daman, and based on the recommendations of the Departmental Promotion Committee dated 29.1.1993, ~~the~~ applicant in his capacity as an Ex-Lecturer of the Government College, Daman, was placed in the Selection grade of Rs.3700-5700/- in the place of his then pay scale (existing) of Rs.2200-4000/- with effect from 1.1.1986. This decision was subject to the post of Lecturer held by him earlier ~~being upgraded~~ to the Selection grade of Rs.3700-5700/- and the fixation of pay resulting therefrom for the applicant in the scale of Rs.3700-5700/- being conditional upon the application of normal rules. However, that order dated 10-12/2/1993 at Annexure-A10, was examined by the Directorate of Accounts, Administration of Daman and Diu, and a communication was addressed to the Assistant Secretary, Administrator's Secretariat, Daman, dated 18.2.1993 at Annexure-A11 by the Director of Accounts, Daman, who has been impleaded as the first Respondent by name. It was pointed out in Annexure-A11 that the approval conveyed by the Government of India under their letter dated 4.1.1989 introducing the UGC scales of pay with effect from 1.1.1986 for the teaching personnel in Government Colleges was ~~subject to the specific condition~~ ⁴⁹ subject to the specific condition that the benefit of the revised scales of pay, i.e., the UGC scales of pay, with effect from 1.1.1986 was to be extended only to those teaching personnel who were earlier

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in the UGC scales of pay, but had vacated the UGC scales of pay when the 4th Pay Commission scales of pay were introduced with effect from 1.1.1986. In those circumstances, in the letter at Annexure-A11⁴⁹, the Director of Accounts⁴⁹ sought the intimation from the Assistant Secretary, Administrator's Secretariat, Daman, as to whether the pay slip should be issued to the applicant in pursuance of the order at Annexure-A10 or not. It was clarified there that pending the receipt of a reply, the pay slip for the revised scale of pay was not being issued to the applicant. The Principal of the Government College, Daman, in his letter addressed to the Assistant Secretary, Administrator's Secretariat, Daman, dated 27.4.1993, submitted a report on the grant of Selection grade to the applicant in conformity with the UGC scales of pay in his capacity as a former Lecturer, in response to the letter dated 23.4.1993, from the said Assistant Secretary. In that report, the Principal explained ~~that~~ ~~non~~ extension of the benefit of the UGC scheme, i.e., the new scales of pay of 1986 to the applicant would be difficult to justify. He specifically mentioned there that under this latter UGC scheme of 1986, 3 categories of Teachers with different pay scales were stipulated and it envisaged placing of certain Lecturers in the Senior scale; whereas under the earlier UGC scheme of 1973, 3 categories of posts of Senior Lecturer, Lecturers

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and Assistant Lecturers had all been merged in the single pay scale of Rs.700-1600/-. Since, several teachers junior to the applicant were placed in the senior scale following the 1986 UGC scheme, the applicant could not be denied such a placing during the time that he was in service. That report from the Principal is available at Annexure-A12.

2. The first Respondent, as the Director of Accounts, sent an urgent reminder dated 7.5.1993 at Annexure-^{A1649}~~A5~~ to the Assistant Secretary, Administrator's Secretariat, Daman, reiterating that the Principal's report did not appear to be correct as the controlling authority, i.e., the Government of India, Ministry of Human Resource Development (Department of Education), while conveying the approval for extension of the pay scales of the UGC scheme had clearly stipulated that the benefits of the revised scales of pay thereunder could be made available only to those teachers who were earlier in the UGC scales of pay, and that the applicant had opted to be out of UGC scale of pay in 1973 itself. The said reminder dated 7.5.1993 stated that the Principal's report should be examined in the office of the appointing authority and suitable instructions sent to the Directorate of Accounts with the instructions as to whether the pay in the selection grade under the 1986 UGC scheme should

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be ~~fixed or~~ not in respect of the applicant. The said reminder sent by the 1st Respondent also stated that the Principal should be requested to support his statement with the specific orders of Government of India and that in the absence of such orders, the stand taken by the Principal should not hold good for the reason that the senior and juniors in the present case were governed by separate sets of the revised pay rules/scales of pay.

3. The applicant has sought the following reliefs:

- a) The 1st Respondent's two letters dated 18.2.93 and 7.5.1993 - Annexures-A11 and A-15 be declared as 'Arbitrary' and violative of Articles 14 and 16(1) of the Constitution of India;
- b) the 1st Respondent's two letters dated 18.2.93 and 7.5.93 - Annexures-A11 and A-15 be quashed and set aside;
- c) to declare that:
 - i) the applicant is entitled to be placed in the selection grade of Rs.3700-5700/- with effect from 1.1.1986;
 - ii) the 3rd Respondent's said order dated 10-12/2/93 Annexure-A10 is legal and valid;
 - iii) the objections raised by the 1st Respondent in his two letters dated 18.2.1993 and 7.5.1993 - Annexures-A11 and A-15 are unsustainable at law.
- d) the 1st Respondent be directed to:
 - i) give effect to the Administrator's said order dated 10-12/2/1993 - Annexure-A10;
 - ii) forth issue pay-slip to the applicant in the selection grade of Rs.3700-5700/- with effect from 1.1.1986;

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- iii) calculate and pay, to the applicant, the amounts of "Arrears of Pay", basing on the said Selection grade, for the period from 1.1.1986 till the date of the applicant's Voluntary Retirement;
- iv) revise the 'Pension Payment Order' (P.P.O.) in respect of the applicant, basing on the Selection grade effective from 1.1.1986;
- v) calculate and pay to the applicant, the amounts of 'Arrears of Pension' basing on the said Selection grade, for the period from the date of the applicant's retirement (3.10.1989) till the date of the judgement in this case;
- vi) continue to pay to the applicant, his Pension basing on the Selection grade effective from 1.1.1986;
- vii) pay to the applicant, the amounts of interest at the rate of 12.5% per annum, on the respective arrears for the period from the date, the same remained unpaid to the applicant, though the Selection grade was made applicable;
- e) to declare that the Second Respondent's act of asking the applicant to exercise option (in 1975) (in 1979) was un-warranted and non-est in view of the 'specific sanction' of the President conveyed (by Respondent No.4) vide Annexure-A1, categorically stating therein that 'In supersession of all earlier orders, the UGC-scale of pay of Rs.700/- to Rs.1600/- was extended to All the college teachers; and that; consequent exercise of applicant's option to continue in (Old) Govt.-scale was erroneous";
- f) to direct the Respondent No.1 to calculate and pay the applicant, the arrears of salaries and emoluments, basing on the UGC-scale of pay of Rs.700-1600/- with effect from the date, the same was made applicable to All the other lecturers of the said college;
- g) The 1st Respondent be ordered to recalculate and pay the applicant all terminal benefits, i.e., gratuity, encashment of leave and pension, etc., according to the stage, to reach by applying the

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selection grade scale of Rs.3700-5700/- with effect from 1.1.1986; and applying the UGC scale of pay of Rs.700-1600/- with effect from 1.1.1973.

- h) The first respondent be ordered to 'Personally' pay to the applicant, the costs, of and incidentals to this Original Application, for his having quite- unnecessarily delayed the payments to the applicant, by way of raising untenable objections and by way of 'Hostile Discrimination' towards the applicant, even after the Principal's 'Report'.
- i) Further and other relief or reliefs, as the nature and circumstances of the case may require, be granted to the applicant.

4. The applicant has also alleged malafide on the part of the 1st Respondent and stated that it is ^{Rs. 19} personal intransigence in refusing to implement the order passed in ¹⁹ ~~these~~ behalf by the competent authority, i.e., the Administrator of Union Territory of Daman and Diu, that has deprived him of the benefits of the order passed by the Administrator. In this context, he has also referred to some ¹⁹ ~~past~~ cases concerning his pay and allowances which, according to him, were also unduly delayed by the first Respondent on account of personal malice towards him.

5. The Respondents have opposed the reliefs sought by the applicant. On their behalf, it has been argued that the applicant cannot claim to be treated on par with those Lecturers in Government College, Daman, who had earlier vacated the UGC scales of pay when the revised pay scales were brought into effect in the wake

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of the recommendations of the 4th Pay Commission. The learned counsel for the Respondents has strongly contended that the applicant ²⁹cannot validly ²⁹invoke the doctrine of equality ²⁹treatment under the provisions of Articles 14 and 16 of the Constitution, for the reason that even before the other Lecturers in the Government College, Daman, vacated the UGC scales of pay, which they had opted for in 1973, ²⁹the applicant had been continuously on the Government scales of pay as ²⁹revised from time to time, right from 1973 itself. Therefore, according to the learned counsel for the ~~Res-~~pondents, the Government of India, in the Department of Education, Ministry of Human Resource Development could validly draw the distinction between a Lecturer like the applicant on the one hand, and the ^{other 29}Lecturers who had earlier opted for the UGC scale of pay from 1973, but were permitted to vacate the UGC scales of pay and opt for the revised Government scales of pay in terms of the recommendations ²⁹of the 4th Pay Commission with effect from 1.1.1986. ²⁹Since, the revised ²⁹UGC scales of pay, providing, inter alia, for a Selection grade, were notified only in 1989, the Department of Education, Government of India, considered it necessary and appropriate to implement the UGC scales of pay for the Lecturers of Government Colleges, the reason being that the revised UGC scales of pay announced in 1989 were also made effective ²⁹from 1.1.1986. The option of the Lecturers in the Government College, Daman for the revised scales of pay under the UGC scheme from 1.1.1986 were called in that specific context, it has been maintained

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on behalf of the official respondents.

6. As regards the ^{allegation of} malafide against the first Respondent, Shri D.M. Joshi, working as the Director of Accounts in the Union Territory of Daman and Diu, who has signed the communication at Annexure-A11 and A-15 mentioned above, the learned counsel for the Respondents has pointed out that it is the duty of the Accounts Department to ^{indicate} ~~ascertain~~ whether eligibility for higher pay as ordered initially by the concerned administrative department requires any reconsideration in the light of the instructions of the Controlling authority, like, the Department of Education, Ministry of Human Resource Development, Government of India, in the present case. It has also been ~~contended~~ that even if in the past the applicant had a feeling that the 1st Respondent had stood in his way of getting certain legitimate dues promptly, those past instances have no relevance at all for the assessing the conduct of the 1st Respondent, ^{here,} ~~by~~ pointing out the specific instructions of the Government of India in the context of the ^{part of the} ~~Selection~~ grade to the applicant under the revised UGC scheme with effect from 1.1.1986 in the present case. In fact, as the Director of Accounts, it is very much a part of his official duties, and ^{the} applicant cannot attribute malafide intentions on the part of the first Respondent when the 1st Respondent ^{has} ~~merely~~ discharged his official duties.

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7. In our opinion, the main issue before us is whether or not the applicant's grievance that he has been treated ^{as} unequal vis-a-vis the other Lecturers of the Government College, Daman, in respect of the grant of the benefits under the revised UG⁶ scales of pay with effect from 1.1.1986, and, therefore, has been discriminated against in a manner violative of the provisions of Articles 14 and 16 of the Constitution ^{is} justified or not.

8. We have taken the trouble of narrating the facts of this case in some detail for the reason that in order to examine the grievance of the applicant, in our opinion, it would be necessary to refer to some of the facts which are not only incontroverted, but are amply borne out by the materials placed before us.

9. We have seen that the colleagues of the applicant in the Government College, Daman, had opted out of the UGC scale of pay and opted for the 4th Pay Commission scales of pay with effect from 1.1.1986 when they had ^{introduced} found the then UGC scales of pay which had been ^{earlier} from 1973 comparatively disadvantageous to them. The applicant, on the other hand, at that point of time, was in the 3rd Pay Commission scale of pay and automatically had opted for the 4th Pay Commission scale of pay. It is, therefore, evident that at that stage the position of the applicant vis-a-vis his colleagues who were

Lecturers in the Government College, Daman, was no different. It ~~has~~⁴⁹ also not been denied by the Respondents that as regards the duties and responsibilities of the post of Lecturer, which the applicant was holding, ~~49~~⁴⁹ ~~there~~⁴⁹ was no difference between the applicant and his colleagues on that score, either. The question, therefore, is; can the applicant be treated ^{49 differently} for the purpose of extending the benefit of the revised ~~49~~⁴⁹ scales of pay notified in 1989, but brought into effect from 1.1.1986, which benefit was extended to his colleagues, who were also on the 4th Pay Commission scale of pay at that point of time?

10. The Respondents have argued ^{that 49} since the applicant ⁴⁹ had ⁴⁹ far back as in 1973, ~~49~~⁴⁹ already opted to remain on the Government scale of pay as a Lecturer, whereas the other Lecturers had opted for the 4th Pay Commission scales of pay only with effect from 1.1.1986, the applicant cannot be treated ⁴⁹ ~~49~~ as belonging to the same class of Lecturers as his colleagues, ⁴⁹ ~~49~~ and therefore, the doctrine of equal treatment guaranteed under the provisions of Articles 14 and 16 of the Constitution cannot be held to have been contravened in treating the applicant on the one hand and those colleagues on the other, differently.

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11. We are not impressed by this line of argument advanced by the learned counsel for the Respondents. Doubtless, the employees always have the option under F.R.23 to remain in their existing, i.e., pre-revised scale of pay either till they earn the next increment therein or till they vacate the posts that they hold when the scales of pay are revised. It is, therefore, obvious that the employees themselves have to exercise the option of whether or not to go over the revised scales of pay whenever these pay scales are revised. At the same time, even though the benefits of the revised higher scales of pay are quite often self-evident, for the sake of complying with the requirements of F.R.23, the employees are called upon to exercise their option either for coming over to the revised scales of pay or to continue in the pre-revised scale of pay. It is also evident that the revised scales of pay including the grant of selection grade of pay to the Lecturers brought about under the revised UGC scales of pay, which were announced in 1989^{and 1990} which were given effect from 1.1.1986, were substantially more beneficial for the Lecturers than the pre-revised^{ie, 1989} 4th Pay Commission scales of pay. Just because the applicant had earlier decided not to switch over to the UGC scales of pay prior to the revision

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with effect from 1.1.1986, it cannot be held that, for all time to come, he had forfeited his right to opt for revised scales of pay which are applicable to the Lecturers similarly placed working in the Government College, Daman. Such a view, in our opinion, will be inequitable and against the basic principle^{19/80} of equal treatment for similarly placed Government employees. Government, as has been declared repeatedly by the Hon'ble Supreme Court, has the obligation to function as the model employer. Unless there are convincing reasons, which can justify any discrimination among Government employees who are otherwise clearly similarly placed in all respects concerning the duties and responsibilities that they discharge, the posts they hold and the hierarchy of administrative control to which they are subject, the option for revised pay scales applicable to that category of the Government employees cannot be restricted on a differential basis to some of them and not extended to some others. This is precisely what has been sought to be done in the present case.

12. The applicant has cited a number of judgements of the Hon'ble Supreme Court of India in support of his claims. We find that in the case of the Indian Council of Agricultural Research Vs. A.N. Lahiri - reported in JT 1997 (5) SC 18, the Hon'ble Supreme Court has stated as follows :

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"...Not only that but in the case of one Dr. Gupta who also was a Scientist working under the ICAR and who was outside ARS was directed to be given same pay scale of Rs. 4500-7300/- as was made available to ARS Scientists by decisions of this Court in the case of Dr. Y.P. Gupta V. Union of India & Ors. (1985) 1 SCC 43 and in the case of P.K. Ramachandra Iyer and others etc. Vs. Union of India & Ors. (1984) 2 SCC 141. Under these circumstances, therefore, it could not be said that the Tribunal had committed any error in directing the appellant to make the same pay scale of Rs. 4500-7300 available to the respondent as was made available to a similarly situated employee like Dr. Gupta who was almost equally circumscribed as the respondent and although being out of ARS was still held entitled as per this Court to the same escalated time scale of Rs. 4500-7300 which was made available to ARS Scientists. It is also to be kept in view ~~that the respondent has kept in view~~ that the respondent has already retired from service and his is almost an isolated case. Under these circumstances, without treating this case as a precedent we deem it fit not to interfere with the order of the Tribunal under Article 136 of the Constitution of India."

13. Though the Apex Court, in the operative part of the ^{above} judgement, did say that under these circumstances, without treating ~~that~~ ^{the} case as a precedent, they considered it fit not to interfere with the order of the Tribunal, the principle ^{en} enunciated by the Hon'ble Supreme Court in the above case clearly has general applicability. Again, in the case of Union of India & Ors. Vs. Shri Bijoy Lal Ghosh & Ors. - reported in 1998 (2) All India Services Law Journal 244, the Apex Court held that when the report of the National Commission on Teachers under the Chairmanship

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of Prof. D.P. Chattopadhyay were implemented, the Respondents in the case before the Apex Court, who were Teachers in Dandakaranya Project as on 1.1.1986, even though they had been rendered surplus on 1.4.1986, were ^{as per} declared as eligible for the revised scales of pay for 3 months, i.e., from 1.1.1986 to 31.3.1986 in terms of the recommendations of the National Commission on Teachers. The Apex Court held ~~th~~ on that occasion that there was no reason for a different classification affecting the Respondents therein adversely.

14. In the present case also, we find that even though the applicant had retired in October, 1989, i.e., prior to the issue of the order at Annexure-A2, dated 29.12.1990, he cannot be deemed to have belonged to a different class for the purpose of conferring the benefits under the ⁴⁹ order at Annexure-A2. We are convinced that in the present case, the doctrine of equal pay for equal work is directly attracted and that the applicant cannot be discriminated against in respect of the grant of the benefits under the revised UGC scales of pay, including the pay for the Selection grade as an Ex-Lecturer of the Government College, Daman, with effect from 1.1.1986.

15. In the light of the detailed discussions made above, we allow the O.A. and direct the Respondents to

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grant him the benefit of placement in the Selection grade of Rs.3700-5700 with effect from 1.1.1986. However, since the approval conveyed by the Department of Education, Ministry of Human Resources Development, Government of India, did have a clause which was amenable to an alternative interpretation based on which the 1st Respondent preferred some objections, we are not inclined to grant any interest on the arrears payable to the applicant in this case in the process of implementation of the direction given by us above. The Respondents are further directed to carry out the above order within a period of three months from the date of receipt of a copy of this order.

16. Parties to bear their own costs.



(S.K. GHOSAL)
MEMBER (A)



(S. VENKATARAMAN)
VICE CHAIRMAN

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