

Ramesh Kumar Vs. M.D. University

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Court : Punjab and Haryana

Decided On : Sep-27-1999

Reported in : (2000)125PLR303

Judge : R.L. Anand, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3; [Limitation Act, 1963](#) - Sections 5

Appeal No. : S.A.O. No. 33 of 1999

Appellant : Ramesh Kumar

Respondent : M.D. University

Advocate for Pet/Ap. : Sewa Singh, Adv.

Judgement :

R.L. Anand, J.

1. Vide this judgment I will dispose of two S.A.O. Nos. 33 and 34 of 1999, titled Ramesh Kumar v. M.D. University, Rohtak, as both these appeals have arisen from the order dated 9.4.1999, passed by the court of Additional District Judge, Rohtak, which allowed the appeals of the parties to the suit and set aside the impugned judgment and decree dated 30.3.1998, passed by the trial Court and remanded the case to the trial Court at the stage when it was before it. Directions

were also given to the Additional District Judge, Rohtak to the trial Court to conclude the trial and decide the suit on merits.

2. Some facts can be noticed in the following manner. Shri Ramesh Kumar son of Shri Banwari Lal filed suit for declaration against the defendant Maharashi Dayanand University, Rohtak and sought a declaration to the effect that the action on the part of the defendant including the impugned letter dated 10.4.1991 vide which the plaintiff was refused his due grades with effect from the date mentioned in para No. 3 of the plaint; and the refusal on the part of the defendant to upgrade the post of the plaintiff from the Assistant Director, Physical Education to Deputy Director, Physical Education, was arbitrary, prejudicial, against equity, mala fide, without jurisdiction and against the principle of natural justice. The plaintiff further sought a declaration that he is entitled to be awarded scale of Rs. 550/990 w.e.f. 11.8.1980; Rs. 700/1600 w.e.f. this date also; Rs. 2000/4000 w.e.f. 1.1.1986 and grade of Rs. 3000/5000 w.e.f. 14.7.1987 and besides that he is also entitled to arrears of interest at the rate of 18 per cent and other costs of the litigation etc.

3. It was pleaded by the plaintiff that he was a regular hand employee of the defendant-University. Earlier he was appointed as Assistant Director, Physical Education-cum-Security Officer w.e.f. 14.7.1979 on ad hoc basis in the grade of Rs. 225-15-360/20-500. Later this grade was revised and the plaintiff was allowed the grade of Rs. 525/1050 from the date of this appointment i.e. with effect from 14.7.79. At the time of his appointment, the plaintiff acquired all the qualifications to be appointed as Assistant Director, Physical Education. As per Notification dated 21.2.1985, he was entitled to be designated as Director of Physical Education instead of Assistant Director of Physical Education. The Executive Council of the defendant vide resolution No. 55, dated 11.8.1980, recommended the upgrading of the post of Assistant Director of Physical Education in the pay scale of Rs. 225-15-360/20-500 to that of Director, Physical Education in the pay scale of Rs. 550-25-750/30-900. The Council further revised the grade of Rs. 550/900 to that of Rs. 700/1600 vide its resolution No. 35 dated 8.10.1984 where the plaintiff as per memo dated 21.2.1985, was entitled to this grade w.e.f. 1.4.1980 but the defendant did not award this revised grade to the plaintiff who had been working in the old grade of Rs. 525/1050. With the revision of the pay

scales w.e.f. 1.1.1986, the old grade of the plaintiff was revised to that of Rs. 1,400/2,600, whereas, the plaintiff was entitled to the grade from 700/1600 to 2200/4000 w.e.f. 1.1.1986 with the completion of eight years service, the plaintiff is entitled to the grade of Rs. 3000/5000 w.e.f. 14.7.1987. The plaintiff has given a Chart how he was allegedly entitled to different grades from 14.7.1979 to 14.7.1987 in para No. 3 of the plaint. His grouse is that though he is entitled to these grades but he has not been awarded by the University and, therefore, declaration should be given to him.

4. Notice of the suit was given to the University which filed the written statement and denied the allegations.

5. For the purpose of this appeal, I need not incorporate in detail the written statement of the defendant but suffice to say that defendant took the preliminary objections; that the plaintiff has no legal right to file the suit; that the suit is incompetent; that plaintiff earlier filed a writ petition before the High Court which was dismissed on 5.8.1992. S.L.P. was also dismissed by the Supreme Court; that the instant suit is barred under Order 2 Rule 2 C.P.C. because the other suit of the plaintiff on the same cause of action is pending before the Sub Judge, 1st Class, Rohtak; that the suit is the abuse of the process of law as the claim of the plaintiff has been dismissed by the High Court and by the Supreme Court; that the suit is barred by limitation.

6. On merits, it was stated in the written statement that the nature and the duties of the Assistant Director, Physical Education are not equivalent to the duties of Director, Physical Education. Notification dated 21.2.19985 was with respect to the pay scale of Librarian/Director, Physical Education was upgraded to that of Director, Physical Education by the Executive council vide resolution No. 55 dated 11.8.1980. The plaintiff represented against the said up-gradation vide his representation dated 18.4.1981 on the ground that if the proposal materialises, he shall be out of job because he did not possess the qualifications for the post of Director, Physical Education. The University allowed him to continue on ad hoc basis and in order to regularise his services, the Executive council vide resolution No. 42 passed in its meeting dated 25.4.1981, down graded the post of Director,

Physical Education to that of Assistant Director, Physical Education.

7. The plaintiff filed a rejoinder to the written statement of the defendant in which he reiterated his allegations made in the plaint by denying those of the written statement and from the above pleadings of the parties, the trial Court framed the following issues:-

1. Whether plaintiff is entitled to be promoted to the post of DPE on the grounds mentioned in the plaint?

2. Whether plaintiff is entitled to the grades as detailed in the plaint, if so to what effect?

3. Whether present suit is barred by principle of res judicata? OPD

4. Whether defendant is entitled to, special costs? OPD

5. Whether the plaintiff has no cause of action? OPD

6. Relief.

8. The proceedings in the trial Court shows that plaintiff appeared as his own witness as PW-1. No evidence was led by the defendant and its evidence was closed by order and when the case was fixed for the rebuttal evidence and for arguments, the statement of one Naval Singh, Assistant in the Establishment Branch of the University and Shri M.C. Bhardwaj, Advocate, of the University, was recorded 25.2.1998, whereby they admitted that on the representation of the plaintiff the Executive Council of the University vide resolution No. 97 in its meeting held on 20.8.1997, has granted the relief claimed by him in both the suits. They also stated that the dues of the plaintiff shall be paid in due course. In response to the said statement, the plaintiff made a statement on 30.3.1998 to the effect that he should be given revised grades from the date mentioned in the decision of the Executive Council dated 12.8.1997 but his post would continue to be remained as Director Physical Education and accordingly, he should also be given the time scale. Taking into consideration the statements made by the defendant and by the plaintiff, the trial Court vide orders dated 30.3.1998, decreed

the suit of the plaintiff in terms of the resolution No. 97 of the meeting of the Executive council and the copy of the extract of resolution No. 97, was made a part of the decree.

9. Feeling dissatisfied with the said judgment and decree dated 30.3.1998, plaintiff Shri Ramesh Kumar filed an appeal. Later on the defendant also filed an appeal which was instituted after the expiry of the limitation but the delay was condoned vide order dated 6.4.1999 passed by the first appellate Court and both the appeals were heard together.

10. Here, the point of controversy arises. The plaintiff was also not satisfied with the judgment and decree dated 30.3.1998, passed by the trial court. There was one offer given by the University vide resolution No. 97. That offer was not accepted by the plaintiffs unconditional. He gave a counter offer and still the trial Court decreed the suit of the plaintiff in terms of the resolution No. 97 on 30.3.1998. If the plaintiff was satisfied with the judgment and decree of the trial Court on the plea that it was a consent decree, there was hardly any necessity on the part of the plaintiff to file the appeal before the first appellate Court. Similarly, there was hardly any necessity on the part of the University to challenge the judgment of the trial Court.

11. The first appellate Court, after hearing the learned counsel for the parties came to the conclusion that the judgment and decree dated 30.3.1998 is liable to be set aside because there was hardly any compromise between the parties under Order 23 Rule 3, C.P.C. It was only an offer given by the University which required the sanction of the State Government as per statute 11-A and moreover. Shri Naval Singh was not authorised to make a statement on behalf of the University. Though there was a statement of a counsel of the University but that was not enough to bind the defendant university because the resolution was not in existence. Moreover, resolution was not acceptable to the plaintiff un-conditional as a whole. So, it cannot be concluded that there was any agreement or compromise between the parties. In this view of the back-ground, the judgment and decree dated 30.3.1998 was set aside.

12. Precisely, in paras No. 27 and 28, the first appellate Court held as under:-

'27. In nut shell there was no written agreement signed by both the parties, there was also no statement by any authorised person on behalf of the defendant accepting the claim of the plaintiff and the plaintiff also did not consent to the proposed agreement, therefore, there was no occasion for the trial Court to have passed a consent decree in the suit.'

'28. It also deserves to be mentioned that the decree passed by learned trial Court is also completely vague. It does not specify the terms of the agreement acceptable to both the parties without any condition and the fate of the terms to which they did not agree.'

13. Aggrieved by the order dated 9.4.1999, passed by the Court of Additional District Judge Rohtak, the present two appeals have been filed by Shri Ramesh Kumar, plaintiff.

14. Vide my order dated 27.8.1999, the record of the Courts below was also requisitioned in order to appreciate the contention of the counsel for the parties.

15. I have heard Shri Sewa Singh, Advocate, on behalf of the appellant, who had assailed the order dated 9.4.1999 of the first appellate Court on different angles. He submitted that the judgment and decree dated 30.3.1998 was a consent decree. It was passed with the consent of the parties and by virtue of the provision of Section 96 of the Clause (3) of Code of Civil Procedure, the appeals of the parties were not maintainable. Supplementing this argument, the learned counsel for the appellant referred to the provisions of Order 12 Rule 6 C.P.C. and submitted that where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court had the power to make such an order or to give a judgment as it thinks fit, having regard to such admissions. He submitted that the judgment dated 30.3.1998 was, at any rate, passed under Order 12 Rule 6 C.P.C. and therefore, the decree has been rightly drawn by the trial Court. He further submitted that the under Order 23 Rule 3 C.P.C. the parties have compromised in the suit by a lawful agreement and that the defendant has satisfied the claim of the plaintiff in part, in such a situation, the trial Court had rightly passed a decree which could not be challenged by the parties before the first appellate Court. The counsel submitted that if the plaintiff or the defendant

had challenged the judgment and decree dated 30.3.1998, the first appellate Court should not have entertained such an appeal and it ought to have been dismissed. The counsel submitted that the plaintiff only claimed interest before the first appellate court. He never gave challenge to the decree dated 30.3.1998 and in these circumstances, the first appellate Court had exceeded its jurisdiction in setting aside the judgment and decree of the trial Court and remanded the case. The counsel also raised other points; such as that the appeal of the University was beyond limitation and the first appellate Court committed a illegality in condoning the delay. According to Mr. Sewa Singh, the University could not make a case of 'sufficient cause' under Section 5 of the Limitation Act. I will discuss all the submissions raised by the counsel for the appellant at the first instance and then I will refer to the case law relied upon by him.

16. At the first instance, I may say that all the arguments raised by the counsel for the parties is devoid of the merit. At the cost of repetition, I am stating that when the case was fixed for the rebuttal evidence, the statement of Shri Naval Singh, was recorded by the trial Court in the presence of the counsel of the University, Mr. M.C. Bhardwaj, in which it was stated as follows:-

'On the plaintiff's representation, Executive Council of the University vide resolution No. 97 of its meeting held on 20.8.1997, has granted relief claimed by him in both the suits. His dues shall be paid in due course.'

17. Nowhere, Shri Naval Singh, had stated that he was authorised by the University to make a statement. In fact, he was only appraising/to the. Court a decision of the University which had not taken the finality, on 25.2.1998. On that date, the statement of the plaintiff was not recorded. His statement was recorded on 30.3.1998, wherein Mr. Ramesh Kumar stated that he may be granted grades as per the decision of Executive council dated 12.8.1997 taken by the M.D. University but post of D.P.E, be kept for him and he may also be given the time scales. Meaning thereby that he was not satisfied with the decision of the University. He gave the counter proposal. There was no meeting of minutes. There was no valid compromise or agreement. There was no statement on behalf of Naval Singh or Mr. Bhardwaj that the suit of the plaintiff may be decreed in part or

that the claim of the interest can be partly determined by the University.

18. In these circumstances, this Court is of the view that the appellate Court rightly appreciated how there was a compromise between the parties to the suit and how there was an admission on the part of the defendant for decreeing the suit in favour of the plaintiff. The plaintiff himself knew that the consent decree has been passed in his favour. Then how he filed an appeal against that judgment. In that eventuality, the defendant could also file an appeal before the first appellate Court.

19. In order to attract the provision of Order 23 Rule 3 C.P.C. it is necessary to be proved to the satisfaction of the Court that suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and is signed by the parties or that defendant has satisfied the whole or part subject matter of the suit and in such a situation alone, the Court has the power to pass a decree and not otherwise. Nothing has proved as required under Order 23 Rule 3 C.P.C. There is no valid basis on the part of the counsel for the appellant to say that the plaintiff only challenged the interest portion of the case before the first appellate stating as follows:-

'The learned lower court erred in ignoring the above prayer of the appellant and had decreed the suit of the appellant in terms of Resolution No. 97, passed by the Executive Council of the respondent.'

20. He further stated in para 3 of the grounds of appeals as follows:-

'That the learned lower Court had wrongly quoted the appellant to have also accepted the decision of the E.C. As there was difference in dates from which the appellant had claimed the above grades and from which the respondent intended to give the said grades to the appellant so the appellant made a specific statement to the effect that he has no objection in case the said grades are given to him from the dates from which the E.C. of the respondent intends to give. The appellant had also made it clear in his statement that his post of DPE may be maintained. The appellant also did not agree by way of his statement, that he be promoted as lecturer from the post of DPE and that interest at the rate of 18 per cent p.a. on all his arrears may not be given to him. But the learned Lower Court erred and

overlooking all these facts:

21. Thus, the reading of the grounds of appeal would show that Shri Ramesh Kumar plaintiff himself was not satisfied with the judgment and decree dated 30.3.1998, passed by the trial Court. Even the judgment of the first appellate Court would show that when the appeal was argued before it the learned counsel for the appellant representing Shri Ramesh Kumar, was not confining his claim only with regard to interest. In this regard, I can quote para No. 16 and 17 of the judgment of the first appellate Court.:-

'16. appraising the argument submitted by both the counsel, the observation at the very outset is inescapable that the plaintiff is trying to play hot and cold in the same breath. As far as he himself is concerned, he has assailed the judgment and decree, passed in his suit for declaration on 30.3.1998 and is vehemently stressing for making necessary alteration in the same as per his prayer. But when came the turn of hearing the appeal filed by the defendant, he has strenuously urged that the impugned judgment and decree had been passed on the basis of a compromise between the parties as envisaged under Order XXIII Rule of the Code of Civil Procedure and, therefore, no appeal lies against the said decree as postulated under Section 96(3) of the said Code. Indeed, no appeal is maintainable against a consent decree which is passed on the lawful agreement and compromise between the parties in respect of the whole or any part of the subject matter of the suit so far as it relates to the parties to the suit. But, it is moot point whether the impugned decree is a consent decree.

17. Learned counsel for the plaintiff argued that the defendant had failed to grant to UGC grade to the plaintiff, according to which he is entitled to the grade of Rs. 3,000-5,0000 w.e.f. 14.7.1987 on completion of 8 years service. The defendant also had unnecessarily changed the post of Director Physical Education into that of lecturer Physical Education which the plaintiff never demanded. Learned counsel contended that the plaintiff never agreed to the proposal of settlement offered by the defendant on the above issues. He did not agree to the compromise by waiving his said claim. More so, learned trial court failed to award interest on the arrears to be paid to the plaintiff to which he is entitled to 18% per annum.

Thus, learned counsel emphasised that the impugned judgment and decree deserves to be modified to that extent of claim of plaintiff.'

22. The above would show that the plaintiff was taking contradictory stands, according to him, his appeal is maintainable against the judgment and decree dated 30.3.1998, whereas, the appeal of the defendant was not maintainable against that very judgment and decree. How, it is possible? The plaintiff's counsel specifically claimed revised grades etc. and stated that his client never agreed to compromise by waiving his claim to the said post. Awarding of interest was one more additional ground. Reliance was also placed on behalf of the appellant. Shri Ramesh, upon A.I.R. 1929 Sindh 32, Mt. Ummalusum v. Ghulam Rasul Khan Burgi, A.I.R. 1974 S.C. 1069, K.C. Dogra v. G. Annamanaid, 1995 L.J.R. 166, Desi Kesari v. Huzurabad Cooperative Marketing Society Limited, and A.I.R. 1968 Gujarat 301, Osman v. Valimohamad. The entire trend of arguments on behalf of the appellant before the first appellate Court was that the resolution No. 97 was not acceptable to him. If this resolution was not having the force because of the sanction of the State Government on 25.2.1998, Shri Naval Singh, could not give any statement on behalf of the University. Even the statement of the counsel for the University could not bind the University because the Resolution No. 97, had never got the approval of the Government. The first appellate Court rightly held that the offer made in the resolution, was not acceptable to the plaintiff unconditional. In this view of the matter, the first appellate Court rightly set aside the judgment and decree of the trial Court and remanded the case for fresh decision, according to law.

23. Now, I will deal with the other submission of Shri Sewa Singh, who submitted that the first appellate court committed a mistake and fell in error in condoning the limitation. As I have stated above, the judgment and decree was passed by the trial Court on 30.3.1998. The University gave challenge to that decree mainly on the strength that resolution No. 97 dated 20.8.1998, could not be implemented because firstly, the Executive Council was not competent to pass the resolution and secondly, the prior approval of the State Government which was mandatory, was not obtained and there was no estoppel against the law etc.

24. Along with the appeal, an application was moved under Section 5 of the Limitation Act. The appeal was filed by the University on 10.10.1998. For certified copy of judgment and decree an application was made on 30.7.1998. It was ready for delivery on 1.8.1998 and was delivered on 20.8.1998. The University made an application under Section 5 of the Limitation Act, coupled with an affidavit, seeking condonation of delay of five and half months on the plea that Shri Naval Singh, who made the statement, had no authority to make such statement. The act on the part of the lawyer as well as the employee was not bona fide. Shri M.C. Bhardwaj, who was on the panel of the University, has been removed. He did not inform the University about the fate of the suit and he even did not supply the certified copy of the judgment and decree to the University and for his lapse on the part of the lawyer, University cannot be allowed to suffer. The matter was considered by the University for preference of an appeal on 8.5.1998 in which a decision was taken that the judgment passed by the Civil Judge, is not enforceable in the eyes of law. The matter was scrutinized by the legal cell and it was decided to obtain the opinion of the counsel Shri M.C. Bhardwaj. Shri Bhardwaj on 12.5.1998, opined that the Executive Council is a supreme body of the University but he did not give any specific opinion as to whether the appeal was maintainable or not. The file was again referred to Shri Bhardwaj who said that no appeal was maintainable. The matter was again discussed in the University with the audit department which strongly objected that Executive Council had no authority to pass the resolution conceding the claim of the plaintiff in view of Section 9(8) and 11-A. Again legal opinion was sought from the Legal Adviser of the University Shri R.N. Hooda who on 5.8.1998, opined that no appeal lies. The matter was again put up for deliberations and considered by the Vice Chancellor. The file was being moved for day to day proceedings. The matter was again taken up seriously by the legal cell on 4.9.1998. The Joint Director, finally apprised of the final implications and the legality of the resolution. The matter was referred to Shri B.B. Batra, Advocate, who gave opinion on 30.9.1998, after looking into the complete facts and circumstances and the validity and the legality of the impugned resolution on the face of the provisions of the Act and Statute, that the appeal is maintainable under Order 34 Rule 1-A Sub Clause (2) of the Limitation Act. Some delay had occurred on account of the routine shuffling of the file inside the University and, therefore,

the appeal was filed beyond limitation and the grounds of delay are bona fide.

25. This application was resisted by Shri Ramesh Kumar tooth and nail and vide order dated 6.4.1999, the learned Additional District Judge, Rohtak, allowed the application under Section 5 of the Limitation Act of the University. This order was not separately challenged by Shri Ramesh Kumar before the High Court but it has been challenged in the connected appeal. Learned counsel Shri Sewa Singh, submitted that the first appellate Court fell in error in allowing the application under Section 5 of the Limitation Act as there was hardly any sufficient cause for condoning the delay of five and half months. Section 5 of the Limitation Act lays down that an appeal can be instituted after the period of limitation if sufficient cause is shown by a defaulting party. What is a sufficient cause is shown by a defaulting party. What is a sufficient cause in a particular case will be question of fact? The phrase 'sufficient cause' has been interpreted from time to time by the Hon'ble Supreme Court and the High Courts and the final opinion which has been formulated by the Hon'ble Supreme Court is that (i) while dealing with such cases, parity has to be maintained between a private citizen and the government institutions, corporate bodies and Universities etc., (ii) the Court dealing with such applications should examine whether there was any mala fides on the part of the Department when it had not filed the appeal within limitation. If those mala fides are not discernible, a liberal approach should be given in favour of a person who is invoking the provision of Section 5 of the Limitation Act. If a discretion has been used in a proper and judicious manner by the Courts below that should not be lightly inferred unless there are cogent and compelling circumstances. The counsel for the appellant relies upon J.T. 1998(7) S.C. 21 P.K. Ramachandran v. State of Kerala. This cited judgment is distinguishable on facts. I have gone through the impugned order of the first appellate Court when it allowed the application under Section 5 of the Limitation Act. It had taken note of all the judicial pronouncements in the context of the circumstances which led to the delay. Refusal to condone the delay feeds public injustice and in premium for lethargy and encourages mischief. The Hon'ble Supreme Court held in several cases that a pragmatic approach should be taken in such a matter. In this context reliance can be placed on A.I.R. 1996 S.C. 148, Deputy Collector Northern Sub-Division, Panaji v. Communitate of Bamolim, A.I.R. 1997 S.C. 1353 Collector Land Acquisition v.

Ketaji, A.I.R. 1996 S.C. 2882 State of J & K v. Dr. Ashok Kumar, A.I.R. 1998 S.C. 897 G Ramagowda v. Special Land Acquisition Officer, Bangalore, and 1996(3) S.C.C. 132, State of Haryana v. Chandramani. Incidentally, all these cited cases have also been relied upon by the learned appellate Court.

26. the learned counsel for the appellant also relied upon (1998-3) 120 P.L.R. 492, Punjab State v. Onkar Nath. In this cited case, the delay was not properly explained. The application under Section 5 of the Limitation Act was not filed along with the appeal and no sufficient reasons were given for the condonation of the delay. In the present case, however, the things are totally different. The moment the University came to know that Mr. Naval Singh and its counsel Shri Bhardwaj had made a statement not authorised in this regard, the University started taking up the matter with its counsel Shri Bhardwaj. He took the opinion of other counsel Hooda. Again the University, took the opinion of Mr. Batra. In (1999-1) 121 P.L.R. 462, N. Balakrishna v. Krishnamurthy, it was held that in every case of delay, there can be some lapse on the part of the litigant but that is not enough to turn down his plea and shut the door against him. The Hon'ble Supreme Court held if the explanation does not smack of mala fides or it is not to be put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

27. The other judgments relied upon by the counsel for the appellant reported as A.I.R. 1993 Calcutta 58, Molla Sirajul Haque v. Gorachand Mullick, and A.I.R. 1987 P & H 60, Raksha Rani v. Ram Lal, are not applicable to the facts of the present case. In this case, the plaintiff himself was treating the judgment and decree dated 30.3.1998 not a consent decree. If he could challenge that judgment and decree in the first appellate Court the University was also within its right to follow the same course.

28. I have considered these appeals from different angles projected to me by the counsel for the appellant and am of the considered opinion that these appeals are totally devoid of any merit. By affirming the judgment dated 9.4.1999, passed by the Court of Additional District Judge, Rohtak. I dismiss both the appeals i.e. S.A.O. Nos. 33 and 34 of 1999. The directions are given to the Registry to send the record of the case back forthwith to the Court of Civil Judge (Junior Division),

Rohtak, so that he may be able to proceed with the case, according to law. On receipt of the record he shall issue notice to the parties and their counsel and then dispose of the matter.

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