

**HIGH COURT OF ANDHRA PRADESH**

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**WRIT PETITION No.21489 OF 2012**

Between:

Shaik Ahmmad

.....Petitioner.

AND

The State of A.P., rep. by its Principal Secretary  
to Government, School Education Department,  
and others.

.....Respondents

**DATE OF JUDGMENT PRONOUNCED: 18.08.2023**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**&**

**THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

1. *Whether Reporters of Local newspapers  
may be allowed to see the Judgments?* Yes/No
2. *Whether the copies of judgment may be  
marked to Law Reporters/Journals* Yes/No
3. *Whether Your Lordships wish to see the  
fair copy of the Judgment?* Yes/No

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**RAVI NATH TILHARI, J**

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**DR. K. MANMADHA RAO, J**

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! Counsel for the Petitioner : Sri M. Sai Krishna

^ Counsel for the respondents : Government Pleader  
for School Education

< Gist :

> Head Note:

? Cases Referred:

<sup>1</sup> (2022) 2 SCC 25

<sup>2</sup> (1994) 4 SCC 104

<sup>3</sup> (2022) 12 SCC 579

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**WRIT PETITION No.21489 OF 2012**

**JUDGMENT**(per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Maganti Sai Krishna, learned counsel for the petitioner and the learned Government Pleader for School Education for the respondents 1 to 4. No representation for the respondents 5 to 8.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for setting aside the order passed by Andhra Pradesh Administrative Tribunal (in short the A.P.A.T) in O.A.No.770 of 2010, dated 22.03.2012, with further direction to the respondents to consider the petitioner for promotion to the post of Headmaster, Grade-II, before promoting the unofficial respondents after reckoning the petitioner's seniority and promotion as Low Female Literacy (for short, LFL) Headmaster/School Assistant with effect from 21.06.1998.

3. The case of the petitioner is that he was appointed as Secondary Grade Teacher on 01.02.1984 and obtained 16 years

automatic timescale on 31.01.2000. He worked in various Elementary Schools and High Schools as SGT. He was promoted as School Assistant (SA) Telugu on 04.03.2006. The respondent No.5 was appointed as SGT on 01.04.1984 and was junior to the petitioner. The respondent Nos.6 to 8 were also appointed in 1985-86 and they were also juniors. The SGT is a District Cadre post. Combined seniority list of SGTs in Primary School and High School, is prepared at District level. In the seniority of SGT(s) in Prakasam District, the respondents 5 to 8 were at Sl.Nos.388, 389, 391 and 392 respectively, junior to the petitioner.

4. The 1<sup>st</sup> respondent-State of Andhra Pradesh issued G.O.Ms.No.400 Edu (PRO G-I) Department dated 05.12.1997 creating new post of Head Masters in 10,647 Primary Schools in the year 1997-98 in LFL areas in the cadre of School Assistants, with an objective to increase the literacy in female in the State. The G.O. Ms.No.400, inter alia provided that the SGT working in the primary schools are eligible for the post of LFL Head Master in Primary Schools. The respondents 5 to 8, juniors to the petitioner were promoted as LFL Headmaster in the cadre of School Assistant on 21.06.1998, only on the ground that they were working in Elementary Schools/Primary Schools.

The petitioner was not so promoted as he was SGT working in High Schools. Later on the petitioner was promoted as School Assistant on 04.03.2006. In the cadre of School Assistant the name of the petitioner did not find place, in the combined seniority list of School Assistant-LFL Headmaster, although the seniority list contained 639 candidates and the last candidate's promotion date was 05.03.2006 whereas the petitioner was promoted on 04.03.2006. As a result there of the petitioner was deprived of further promotion to the post of Headmaster, Grade-II in High Schools.

5. Raising the aforesaid grievance, the petitioner filed the O.A.No.707 of 2010 to declare the G.O.Ms.No.400 dated 05.12.1997 as illegal, arbitrary, discriminatory, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India with further consequential relief.

6. The respondents filed counter affidavit and opposed the O.A inter alia on the ground that the petitioner was appointed and joined as S.GT on 01.02.1984 working in Mandal Parishad Primary Schools and in Zilla Parishad High Schools with effect from 14.08.1991. Subsequently, in promotion counselling held in 2005 he was promoted as School Assistant with effect from 03.07.2006 and ever since he has been working as School

Assistant (Telugu). It is the case of the respondents that the petitioner did not appear in the counselling for promotion for LFL Headmaster conducted many times including the names of the Secondary Grade Teachers working in High Schools also. The claim of the petitioner seeking notional promotion with effect from 21.06.1998 is highly belated after more than 12 years, which suffered from delay and laches.

7. The A.P.A.T rejected the O.A vide judgment dated 22.03.2012 on the ground that the claim of the petitioner was hit by delay and laches.

8. The A.P.A.T held that as per G.O.Ms.No.400 dated 05.12.1997, District Educational Officers (DEOs) were directed to fill up the LFL Headmasters by promotion of SGT working in the Primary Schools. Later on many times LFL Headmasters' promotions were conducted by duly including SGTs working in the High Schools also. The petitioner never made any request to the authorities to consider his case for such promotion. He was promoted as School Assistant in 2006. The claim for notional promotion in the category of School Assistant with effect from 21.06.1998, could not be granted.

9. Learned counsel for the petitioner submitted that as per G.O.Ms.No.400, dated 05.12.1997 the post of LFL was to be filled by promotions from amongst the senior most SGT teachers working in Primary Schools and as the petitioner was working, SGT in the High School, he did not represent but later on he came to know that the SGT Teachers working in the High Schools were also promoted. Consequently, the petitioner challenged the G.O.Ms.No.400, dated 05.12.1997, and in particular the condition in para 3, instruction (iv), therein which provided that the posts in LFL was to be filled from amongst senior most SGT teachers working in Primary Schools, in APAT.

10. Learned Government Pleader submitted that the respondents 5 to 8 were rightly promoted to the post of Head Master (LFL) in the cadre of School Assistant, on 21.06.1998 as they were working in Primary Schools and the petitioner was working in High School, as such he could not be given such promotion for the reason in view of para 3(iv) of the G.O.Ms.No.400.

11. Learned Government Pleader further submitted that after 21.06.1998, promotion counselling for Head Master (LFL) was conducted several times, duly including the name of the SGT working in High Schools also, but the petitioner never

approached the authorities by claiming promotion. As such, he is not entitled for the relief claimed.

12. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

13. G.O.Ms.No.400 dated 05.12.1997 is reproduced as under:

**“GOVERNMENT OF ANDHRA PRADESH**

**ABSTRACT**

Primary Education – O.B.B – Improving educational facilities for Girl Children Strengthening of Primary Schools in low female literacy area creation of new posts of Head Masters in 10,647 existing primary schools in 1997-98 in low female literacy/areas – Orders – Issued.

**EDUCATION (PROG-I) DEPARTMENT**

**G.O.Ms.No.400**

**Dated 5.12.1997**

1. Government of India Lr.No.D.O.No.F1-4-/97-OB Dated: 25.04.1997 and 26.06.97.

2. From Commissioner & Director of School Education, A.P., Hyd. Lr.No.425/B5-1/97 dated 30.04.97 and 16.7.1997.

**ORDER:**

Government of India in the reference first read above informed that during IX Plan, it is proposed to add two new components by expanding the scope of the O.B.B scheme to meet the special needs of girls and to improve school level supervision and management of Primary School. The new components will include provision of financial assistance for;

1. i) Opening of 30,000 Upper Primary Schools in blocks where female literacy rate is lower than the average female literacy of the State, and  
ii) Provision of a Headmaster in 25% of Primary Schools in the State.



2. Accordingly the Commissioner & Director of School Education in the reference second read above has formulated the proposal taking into consideration the female literacy rate in the State as per 1991 census, 35,821 Primary Schools are located in Mandals where the female literacy rate is less than State average of 32.72% and proposal for up gradation of 3000 Primary Schools into the Upper Primary Schools during 1997-98. The Commissioner & Director of school Education has also submitted proposal for creation of 10,647 Posts of head masters in 25% of existing Primary Schools in the State, and stated that there is dire need for creation of separate Headmasters posts for Primary Schools in the cadre of School Assistant to Improve the enrolment retention and quality education for girl children by giving academic guidance and supervision.

3. Government after careful consideration hereby agreed to the proposal of the Commissioner & Director of School Education and accord sanction for creation of 10,647 posts of Headmasters for Primary Schools in the scale of Pay of Rs.2525-5390 to work as Headmaster in 25% existing Primary Schools in low female literacy villages during 1997-1998.

The Director of School Education is hereby directed to fill up these posts by following the guidelines as below:

- i) the 10,647 Posts of Headmasters shall be allotted to all Districts based as female literacy as per the Annexure to this order.
- ii) The posts so allotted to each district shall be created only in the schools in the low female literacy villages duly arranging all villages in ascending order in female literacy.
- iii) The promotions shall be done based on considered seniority of all S.G.B.T.s in the district.
- iv) The District Educational Officers shall fill up these posts by promotion from amongst the senior most S.G.B.T teachers working in Primary Schools.
- v) The promoted Headmasters shall give an undertaking that they will work in the place of posting for a period of 10 years (Ten years) from the date of posting, unless shifted by the management to another low female literacy village on transfer.
- vi) The Headmaster shall not be posted outside low literacy village on transfer for a period 10 years (Ten years)
- vii) If the senior most teacher in the panel is not willing to abide these conditions, chance may be given to the next the seniority list, so as to ensure that the benefits of the programme reach the girl Children in low female literacy areas without any further delay;

- viii) The Teachers so placed in seniority list shall be posted to the schools based on "Counselling System" i.e., the teachers shall be offered to chose from the available vacancies in such newly created posts with senior most teacher called first and the rest in the order of seniority. The who exercise shall be most transparent. Order shall be issued to the District Educational Officer's then and there based on the choice of the teachers.
- ix) The vacancies created by these promotions shall be filled up by direct recruitment as per rules vogue.

4. The expenditure on salaries shall be debited to the following Head of Account:-

"2202 – General Education-01 Elementary Edn-MH 800  
Other Expenditure schemes included in the Plan Centrally  
Sponsored Schemes.

SH (10) Operation Black Board Scheme

010 – Salaries /090 – Grant-in-aid

091 – Grant-in-aid towards salaries"

5. The Director of School Education is requested to make the expenditure on salaries only after filling up of the posts sanctioned in para (3) above.

6. This order issues with the concurrence of Finance and Planning (Fin-EBS-VI) Department vide their U.O.No.30/A/1EBS18/97 dated 2.12.1997.

(By order and in the name of the Governor of Andhra Pradesh)

M.V.P.C. Sastry,

Secretary to Government."

14. Para 3 instruction (iv) of G.O.Ms.No.400 provided that the District Education Officer shall fill up the post of Head Master (LFL) by promotion from amongst the senior most SGT teachers working in Primary Schools. However, as per the own case of the respondents 1 to 4 promotion was also made of SGT(s) working in High Schools.

15. We are of the view that the petitioner cannot be faulted for not representing for promotion to the post of Head Master (LPL).

16. The stand taken by the respondents before the A.P.A.T as also before us is that the petitioner did not represent for such promotion and after eleven years his claim is not sustainable. The reason for our such view is that under the G.O.Ms.No.400, it was only from the SGT teachers working in Primary Schools the promotion was to be made to Head Master (LFL). Consequently, the petitioner had no right or occasion to apply, as promotion could not be given to the petitioner in view of para 3(iv) of G.O, he not being in the primary schools but in the High Schools.

17. There appears to be some change or relaxation granted, in condition (para (3)(iv)) and even if it was not so for the reasons best known to the respondents 1 to 4, SGT working in High School, were also granted promotion to the post of Head Master (LFL). In such a case, it was the duty of the official respondents to have communicated such chances of promotion being given to those SGT(s) working in the High Schools, and to have granted opportunity to the petitioner, also, if the petitioner was or was not willing for such promotion. There is nothing on

record to show such exercise having been undertaken by the respondents 1 to 4.

18. The act of the respondents 1 to 4 in granting promotion to the juniors to the petitioner cannot be said to be, under the circumstances, fair or transparent for want of opportunity to the petitioner standing senior to those, granted promotion, in the combined seniority list. The petitioner's seniority over respondents 5 to 8 has not been disputed by official respondents.

19. The stand of the respondents 1 to 4 that the petitioner did not approach the authorities for promotion, is highly unsustainable. In the matter of promotions, the person should not be required to approach the authorities. It is for the authorities to consider the case of promotion of the eligible persons as per their right and as per their turn. The authorities appear to have promoted those SGT to Head Master (LFL) working in High Schools who approached the authorities, as appears to be their case from the stand taken. The deprivation to the petitioner of consideration for promotion at the time of promotion of juniors is not fair.

20. In ***Union of India v. N. Murugesan***<sup>1</sup> the Hon'ble Apex Court held that the doctrine of fairness is inbuilt in every employer and employee relationship. The doctrine of fairness has to be applied with more vigour when it involves instrumentality of the State. Therefore, a State is not expected to act adversely to the interests of the employee.

21 The Hon'ble Apex Court referred to its previous judgment in ***Excise Commr. V. Issac Peter***<sup>2</sup> in which it was held that doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law field to ensure the rule of law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative.

22. It is apt to refer paragraph 30 of ***N. Murugesan*** (supra) as under:

***Doctrine of fairness***

**30.** The doctrine of fairness is inbuilt in every employer and employee relationship. The said doctrine has to be applied after the relationship comes into being rather than at the stage of recruitment.

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<sup>1</sup> (2022) 2 SCC 25

<sup>2</sup> (1994) 4 SCC 104

While dealing with recruitment, on the question of suitability and adequacy, substantial discretion is appropriately conferred on the employer. At that stage, the question is with respect to the need of the employer to complete a particular type of work. **In an employer and employee relationship, the doctrine of fairness has to be applied with more vigour when it involves an instrumentality of the State. Therefore, a State is not expected to act adversely to the interest of the employee, and any discrimination should be a valid one.** Ultimately, one has to see the overwhelming public interest as every action of the instrumentality of the State is presumed to be so. While applying the said principle, one has to be conscious of the fact that there may not be a legitimate expectation on the part of an employee as against the statute. We would like to refer to the following judgment of this Court on the above principle:

23. It is settled in law that the consideration for promotion is a fundamental right. Recently, in **Ajay Kumar Shukla v. Arvind Rai**<sup>3</sup> the Hon'ble Apex Court reiterated, right to be considered for promotion to be a fundamental right.

24. It is apt to refer paragraphs 41, 42 & 43 in **Ajay Kumar Shukla** (supra) as under:

“41. This Court, time and again, has laid emphasis on right to be considered for promotion to be a fundamental right, as was held by K. Ramaswamy, J., in *Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty* [*Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty*, (1991)

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<sup>3</sup> (2022) 12 SCC 579

2 SCC 295 : 1991 SCC (L&S) 472] in para 4 of the report which is reproduced below : (SCC p. 299)

“4. ... There is no fundamental right to promotion, but an employee has only right to be considered for promotion, when it arises, in accordance with relevant rules. From this perspective in our view the conclusion of the High Court that the gradation list prepared by the corporation is in violation of the right of respondent-writ petitioner to equality enshrined under Article 14 read with Article 16 of the Constitution, and the respondent-writ petitioner was unjustly denied of the same is obviously unjustified.”

42. A Constitution Bench in *Ajit Singh (2) v. State of Punjab* [*Ajit Singh (2) v. State of Punjab*, (1999) 7 SCC 209 : 1999 SCC (L&S) 1239] , laying emphasis on Article 14 and Article 16(1) of the Constitution of India held that if a person who satisfies the eligibility and the criteria for promotion but still is not considered for promotion, then there will be clear violation of his/her's fundamental right. Jagannadha Rao, J. speaking for himself and Anand, C.J., Venkataswami, Pattanaik, Kurdukar, JJ., observed the same as follows in paras 22 and 27 : (SCC pp. 227-28)

*“Articles 14 and 16(1) : is right to be considered for promotion a fundamental right*

22. Article 14 and Article 16(1) are closely connected. They deal with individual rights of the person. Article 14 demands that the ‘State shall not deny to any person equality before the law or the equal protection of the laws’. Article 16(1) issues a positive command that:

‘there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State’.

It has been held repeatedly by this Court that clause (1) of Article 16 is a facet of Article 14 and that it takes its roots from Article 14. The said clause particularises the generality in Article 14 and identifies, in a constitutional sense “equality of opportunity” in matters of employment and appointment to any office under the State. The word “employment” being wider, there is no dispute that it takes within its fold, the aspect of promotions to posts above the stage of initial level of recruitment. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be “considered” for promotion. Equal opportunity here means the right to be “considered” for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be “considered” for promotion, which is his personal right.

*“Promotion” based on equal opportunity and seniority attached to such promotion are facets of fundamental right under Article 16(1)*

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27. In our opinion, the above view expressed in *Ashok Kumar Gupta* [*Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and followed in *Jagdish Lal* [*Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] and other cases, if it is intended to lay down that the right guaranteed to employees for being “considered” for promotion according to relevant rules of recruitment by promotion (i.e. whether on the basis of seniority or merit) is only a *statutory*



*right* and not a *fundamental right*, we cannot accept the proposition. We have already stated earlier that the right to equal opportunity in the matter of promotion in the sense of a right to be “considered” for promotion is indeed a fundamental right guaranteed under Article 16(1) and this has never been doubted in any other case before *Ashok Kumar Gupta* [*Ashok Kumar Gupta v. State of U.P.*, (1997) 5 SCC 201 : 1997 SCC (L&S) 1299] right from 1950.”

(emphasis in original)

**43.** This Court in *H.M. Singh v. Union of India* [*H.M. Singh v. Union of India*, (2014) 3 SCC 670 : (2014) 1 SCC (L&S) 649] , again reiterated the legal position i.e. right to be considered for promotion as a fundamental right enshrined under Article 14 and Article 16 of the Constitution of India. The relevant extract from para 28 is reproduced below : (SCC p. 686)

“28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition that the respondents were desirous of filling the vacancy of Lieutenant-General, when it became available on 1-1-2007. The factual position depicted in the counter-affidavit reveals that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the seniormost serving Major-General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection

of the laws, extended by Article 14 of the Constitution of India. We are of the view that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29-2-2008, and thereafter, by a further Presidential Order dated 30-5-2008. The above orders clearly depict that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant-General (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet, stands affirmed). The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant-General would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.”

25. The petitioner has claimed only the notional promotion from 21.06.1998, the date the petitioner's juniors were promoted and consequent seniority for further service benefits.

26. Though the petitioner approached after about 12 years, but we do not find that the petitioner is responsible for such delay in raising his claim.

27. Delay or laches in approaching the court/Tribunal may not always be considered as fatal to the legitimate claim of the aggrieved person. The facts and circumstances of each case would determine, to deny or not to deny the claim based on the plea of laches/delay.

28. In ***Ajay Kumar Shukla*** (supra) one of the points for consideration was also the delay and laches in challenging the seniority list and satisfactory explanation after the reasonable period. The Hon'ble Apex Court observed that if the seniority list is allowed to be sustained then the Engineers who are more meritorious in the Mechanical and Civil streams than the Junior Engineers of the Agricultural stream would be deprived of their right of being considered for promotion and in fact their right would accrue only after all the Junior Engineers of the Agricultural stream selected in the same selection are granted promotion.

29. Here, we are of the considered view that while considering the question of laches or delay in approaching the Tribunal by the 1<sup>st</sup> respondent, the act of the respondents in granting promotion to the persons juniors to the petitioner, who are SGT in high schools and not considering the petitioner for the reason assigned discussed above cannot be ignored, when the

petitioner came to know about such promotions, the O.A was filed.

30. We are of the further considered view that, rejection of the petitioner's claim on the ground of laches by the Tribunal, would deprive the petitioner of his right of being considered for further promotion, before the promotion of his juniors, respondents No.5 to 8.

31. We are of the considered view that in the light of the stand taken by the respondents 1 to 4 that the promotions were made from SGT to Head Master (LFL) from amongst working in High Schools as well, the petitioner is entitled for the relief claimed even if G.O.Ms.No.400, stands as it is.

32. In the result, the writ petition is allowed setting aside the order dated 22.03.2012, passed by the A.P. Administrative Tribunal, Hyderabad in O.A.No.707 of 2010.

33. The respondents 1 to 4 are directed to consider the case of the petitioner for promotion to the post of Head Master, Grade-II, in accordance with law, after granting him notional promotion and seniority on the post of School Assistant/Head Master (LFL), with effect from the date, his juniors were granted such promotion, i.e., w.e.f. 21.06.1998.

34. The above exercise shall be done within a period of three months from the date copy of this judgment is served to the official respondents.

35. No order as to costs.

Consequently, the miscellaneous petitions, if any, pending in the petition shall stand closed.

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**RAVI NATH TILHARI, J**

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**DR. K. MANMADHA RAO, J**

Date: 18.08.2023

**Note:**

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**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

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**THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**WRIT PETITION No.21489 OF 2012**

**Date: 18.08.2023**

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