

(2023) 10 OHC CK 0204
In the Orissa High Court
Case No : Writ Petition (C) No. 17364 Of 2020

Rasmi Badu

APPELLANT

Vs

Secretary, Housing and Urban Development Deptt.
Bhubaneswar And Others

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Citation : (2023) 10 OHC CK 0204

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : Satabrata Mohanty, G.N. Rout, A.P. Ray

Final Decision : Disposed Of

Judgement

S.K. Mishra, J

1. The Petitioner, who was appointed in the year 2011 as Contractual Community Organizer under the Swarna Jayanti Sahari Rojgar Yogna (SJSRY), a centrally sponsored scheme, has preferred the Writ Petition challenging the Office Order dated 30.05.2020 of the Executive Officer, Jagatsinghpur Municipality (Annexure-7), vide which she was relieved from her duties w.e.f. 30.05.2020 (F.N.) and was directed to handover all the charges, records and files etc. of her seat to one K. Dei, DLR and S. Lenka, Contractual Accountant immediately. A further prayer has been made to allow the Petitioner to resume her duty as usual with all consequential service benefits.

2. The factual matrix of the present Writ Petition in nutshell is that the Petitioner, having all the eligibility criteria in terms of Resolution dated 31.03.2010 of the Housing and Urban Development Department (H & U.D. Deptt.), vide Gazette Notification as at Annexure-1, applied for the post of Community Organizer (CO) for the District of Jagatsinghpur. After facing due process of selection, the Petitioner was selected for engagement/appointment as contractual lady CO for the Jagatsinghpur Municipality. Accordingly, the A.D.M.-Cum-P.D., DUDA,

Jagatsinghpur communicated the same to the Executive Officer, Jagatsinghpur Municipality vide letter dated 20.12.2011 (Annexure-2). Pursuant to such selection, the Deputy Collector, Gen & Misc., Collectorate, Jagatsinghpur, vide letter dated 01.12.2011 intimated the Petitioner that the Selection Committee will verify her original certificates in the Office Chamber of the ADM-Cum-PD, DUDA, Jagatsinghpur on 12.12.2011 at 3.00 P.M. Vide the said communication it was also intimated that if she fails to remain present as informed, her application will not be considered for the said post of CO.

On appearance and production of original documents, as directed, the Executive Officer, Jagatsinghpur Municipality, vide letter dated 21.12.2011 (Annexure-3 Series), intimated the Petitioner that she has been selected for the post of contractual CO in the said Municipality by the Selection Committee of District Office, Jagatsinghpur. She was requested to make an agreement with the Executive Officer within 7 days from the date of receipt of said letter enabling the Executive Officer to issue an engagement letter in her favour. On execution of an agreement on 23.12.2011, on the very same day engagement letter was issued in favour of the Petitioner by the Municipal Commissioner/Executive Officer on a fixed monthly remuneration of Rs.5,000/-.

It is further case of the Petitioner that the Executive Officer, Jagatsinghpur Municipality (Opposite Party No.4), furnished performance appraisal report of Contractual Community Organizers in the prescribed format in respect of Jagatsinghpur Municipality to the Additional Director, SUDA, Bhubaneswar vide letter dated 24.08.2017 (Annexure-4), wherefrom it is crystal clear that the year wise performance report of the Petitioner from the date of her initial appointment till 31.07.2017 was outstanding.

Thereafter, the Petitioner continued to work as CO under the Jagatsinghpur Municipality. Her contract got renewed up to 28.02.2018. Subsequently, further agreement was executed on 01.03.2020, pursuant to the order of the Special Secretary to Government, H & UD Dept. The said agreement commenced with effect from 01.03.2020 and was valid till 28.02.2021. While working as such, the Petitioner felt ill and took leave for her treatment. After being declared fit, she again resumed her duty by submitting joining report on 29.05.2020 along with the doctor's prescription and different medical reports (Annexure-6 series), which were duly acknowledged by the concerned Authority. However, on the very next day i.e. on 30.05.2020, the Executive Officer, Jagatsinghpur Municipality issued an Office Order (Annexure-7) ordering therein that the Petitioner is relieved from her duties w.e.f. 30.05.2020 (F.N.) as approved by the Collector & District Magistrate, Jagatsinghpur. It was ordered that one Kanaklata Dei, DLR is to remain in charge of Nodal CO and Sushreemayee Lenka, Contractual Accountant will remain in charge of CMMU Manager in addition to their own duties until further orders. Vide said Office Order, the Petitioner was directed to handover all the charges, records and files etc. of her seat to K. Dei and S. Lenka immediately.

On getting such Office Order dated 30.05.2020, the Petitioner was surprised and

wanted to meet the Executive Officer, Jagatsinghpur Municipality (Opposite Party No.4), who avoided to meet her. Thereafter, she immediately made correspondences (Annexure-8 series) to the Authority concerned for reconsideration of her case as she was never been noticed nor opportunity had ever been given to her before relieving her from duty. That to, such action taken against her during the Pandemic COVID-19 is not only harsh and painful but also without following the principles of natural justice.

Though the Petitioner was going to the Office of the Opposite Party No.4 everyday to pursue her case, but the Authority concerned neither responded her nor her representations were considered in the proper prospective, which itself shows the mala fide intention of the said Authority to disengage the Petitioner.

It is further case of the Petitioner that despite communicating to the State Urban Development Agency (SUDA) about her performance to be outstanding and entering into agreements with her from time to time, including a fresh agreement in the month of March, 2020, and allowing her to continue in the post of CO with consolidated salary of Rs.16,080/-, all of a sudden, issuance of relieve order without assigning any reason therein and not extending any opportunity to Show Cause is not only harsh but also arbitrary and violative of the principle of natural justice. Hence, the impugned Order dated 30.05.2020, being illegal in the eyes of law, deserves to be quashed.

It is further case of the Petitioner that as per the Agreement executed with her, it was agreed upon that in case of her involvement in any illegal activities or allegations levelled against her, the Collector-Cum-Chairman, DUDA of Jagatsinghpur Municipality should have conducted an enquiry and thereafter, should have taken action against her. But, in the instant case, there was no occasion for any enquiry, Show Cause or any opportunity of hearing, as no allegation was ever made against the Petitioner before issuance of impugned relieve order, as at Annexure-7, which clearly indicates as to malafidness, perverseness and ulterior motive of the Authority concerned.

It is also stand of the Petitioner that the H & UD Dept. on 03.06.2020 issued a Circular (Annexure-9) pertaining to evaluation of performance of the Community Organizers, MIS Computer Programmers and Accountant on contractual basis so also renewal of their annual contract. It was clearly clarified vide the said Circular that in case of involvement in illegal activities or allegations are levelled against the contractual CO, Accountant & MIS Computer Programmer, the competent Authority i.e. Collector-Cum-Chairman, DUDA in case of Municipalities/NAC and Municipal Commissioners in case of Municipal Corporations will conduct an enquiry and being satisfied, the Collector/Municipal Commissioner shall disengage him/her, as it is a part of the contract agreement. Accordingly, the ULBs were advised to take appropriate action on the allegations / complaints made against the contractual Cos / MIS Computer Programmers / Accountants strictly adhering to the process indicated in the said Circular and as provided in the contract agreement in terms with the Department letter No.5706 dated

26.02.2018. As the Executive Officer, Jagatsinghpur Municipality did not take any action on the representation of the Petitioner, the Joint Secretary to the Government, H & UD Dept. issued a letter on 17.06.2020 (Annexure-10) to the Executive Officer, Jagatsinghpur Municipality requesting therein to look into the matter and take appropriate action on such representation strictly adhering to the instruction communicated vide Department letter dated 10153, dated 03.06.2020 under intimation to the said Department. Despite such request, after relieving the Petitioner from her post/position vide Order dated 30.05.2020, she has not been allowed to report anywhere for which she is running from pillar to post and was being constrained to approach this Court in form of the present Writ Petition.

3. Being noticed, the Collector-Cum-Chairman, DUDA (Opposite Party No.3) and the Executive Officer, Jagatsinghpur (Opposite Party No.4) appeared and filed a joint Counter Affidavit. A stand has been taken in the Counter that the documents under Annexure-6 Series i.e. representation so also the medical documents, have been created for the purpose of the present Writ Petition to safeguard interest of the Petitioner, even though the same is not permissible as per the Resolution of H & UD Dept. under Annexure-1 and the Agreement under Annexure-5 Series. It has further been stated that because of out-break of COVID-19, Government of Odisha issued various letters to take preventive and precautionary measures to combat COVID-19. Instructions were issued from various Departments to carry out various measures to combat COVID-19, functioning / management of quarantine centres and temporary medical centres, providing food to needy, distress, poor and physically challenged persons, food to stray animals etc. sanitize, cleaning of different wards, centres, institutions, organizations etc. For the purpose of carry out such works, General Administration and Public Grievance Department issued various Orders for COVID-19 management. Accordingly, Jagatsinghpur Municipality, who is under the administrative control of H & UD Dept. functioned on day and night basis to manage the pandemic situation with limited man power. In such a situation, the Petitioner remained absent and went on leave without any permission of the Executive Officer or any superior Authority and submitted different representations to allow her to stay at home. Though the District Head Quarter Hospital of Jagatsinghpur is around 2 kilometres away from her home, she furnished medical related documents of Apollo Hospitals, Bhubaneswar. After receipt of representation submitted by the Petitioner for her re-engagement, the file was sent to the Legal Adviser of the Jagatsinghpur Municipality seeking for his opinion and advice. The Legal Adviser opined on 14.08.2020 advising therein that since Petitioner has been relieved from her duty, one opportunity is to be given to her to face an enquiry for her misconduct. A stand has also been taken in the Counter that such relieve order, as at Annexure-7, has been issued after due approval of the Collector & District Magistrate, Jagatsinghpur and the copy of the said Order has been communicated to various Authorities. Hence, it is duty of the Petitioner to join before appropriate Authority after she was relieved and it is

not within the knowledge of the deponent of the said Counter Affidavit as to whether the Petitioner has joined or not with the Authority after she was relieved vide Office Order dated 30.05.2020.

Also, a stand has been taken in the Counter Affidavit that the Petitioner tendered her resignation on 02.04.2020 (Annexure-C/3) on the plea of her ill-health and personal reason. The said resignation was transmitted to the Collector and District Magistrate-Cum-Chairman, DUDA, Executive Officer, Jagatsinghpur Municipality, Project Director, DUDA, Addl. Director, SUDA. However, immediately thereafter, she withdrew her resignation, which has been accepted by the Collector & District Magistrate-Cum- Chairman, DUDA and it was also communicated to her vide Office letter No.4675 dated 04.04.2020 (Annexure-D/3). Again, the Petitioner applied for leave on 03.05.2020 for the period from 03.05.2020 to 31.05.2020 due to her illness. But, the said leave application was never allowed due to ongoing operational activities to combat pandemic COVID-19. At the time of emergency, the Petitioner went on applying for leave, tendering resignation, withdrew the same and again applied for leave on health ground. The said facts were duly appraised to the Collector & District Magistrate-Cum-Administrator, Jagatsinghpur Municipality and the Chairman of DUDA, who approved to relieve the Petitioner from her duty/service. Accordingly, vide Order dated 30.05.2020, the Petitioner was instructed to hand over all the charges, records and files etc. to one Kanaklata Dei, DLR and Sushreemayee Lenka, Contractual Accountant. It has also been admitted in the Counter Affidavit that the H & UD Dept. vide letter dated 17.06.2020 requested the Executive Officer, Jagatsinghpur Municipality to consider the representation of the Petitioner as per H & UD Dept. letter No.10153 dated 03.06.2020 (Annexure-G/3, same as Annexure-9 in the Writ Petition). Accordingly, views were taken from the Legal Adviser of the Jagatsinghpur Municipality, who on 14.08.2020, as at Annexure-H/3, advised to decide the matter by making an enquiry after giving an opportunity of hearing to the Petitioner.

4. In response to the Counter filed by the contesting Opposite Party Nos. 3 and 4, the Petitioner has filed a Rejoinder Affidavit reiterating therein the averments made in the Writ Petition. It has been stated in the Rejoinder Affidavit by the Petitioner that if she remained absent unauthorizedly, she should have been served with a Show Cause Notice and should have been extended ample opportunity before issuance of relieve order. But, in the instant case, the Authority concerned, without doing so, in an autocratic manner relieved her from duty w.e.f. 30.05.2020 by giving a complete go-by to the principles of natural justice so also contrary to the guidelines in terms of Circular dated 03.06.2020 (Annexure-9). It has further been stated in the Rejoinder that the stand taken in Paragraphs 13 and 14 of the Counter is as to lack of knowledge of the said Opposite Parties as to whether the Petitioner has joined or not is misleading. The said Opposite Parties, being the Authority, are to allow her to resume her duty. Such statement in the Counter is unfortunate and ridiculous, when admittedly she was having unblemished service career with report of "outstanding

performance”.

5. Mr. Mohanty, learned Counsel for the Petitioner, drawing attention of this Court to Clause-9 of the agreement dated 01.03.2020, as at Annexure-5 series, so also Circular dated 03.06.2020, as at Annexure-9 of the Writ Petition, submitted that a stand has been taken in the Counter that when there was need to combat the pandemic COVID-19, the Petitioner remained on authorized leave, which is a misconduct on her part. Proper procedure ought to have been followed by the Authority concerned in terms of Clause-9 of the agreement dated 01.03.2020 by making an enquiry into the matter and after being satisfied, the Authority concerned should have gone for disengaging the Petitioner. Mr. Mohanty, further drawing attention of this Court to the communication dated 04.04.2020 of the Executive Officer, Jagatsinghpur Municipality addressed to the Petitioner, as at Annexure-D/3, submitted that though a stand has been taken in the Counter Affidavit that the Petitioner tendered resignation on 02.04.2020 due to her ill-health and the same was duly accepted by the Collector & District Magistrate, Jagatsinghpur, but the said communication dated 04.04.2020 well demonstrates that on tendering application for withdrawal of the resignation from duty w.e.f. 02.04.2020, the Executive Officer, Jagatsinghpur Municipality, vide the said communication dated 04.04.2020 intimated the Petitioner that since she sent the said resignation through e-mail, the same has not been accepted. Hence, she may continue in service as usual with further intimation to be careful in future. Mr. Mohanty further submitted that such a stand in the Counter being contrary to the contents of letter dated 04.04.2020 is misleading. He further submitted that in view of the Clause-9 of the Agreement dated 01.03.2020 and the Circular dated 03.06.2020 of the Government of Odisha, H & UD Dept. as to the procedure to be followed before disengaging a contractual CO., not being followed by the Authority concerned so also in view of the opinion tendered by the Legal Adviser of Jagatsinghpur Municipality, it is a fit case where this Court should interfere and set aside the Office Order dated 30.05.2020 (Annexure-7) and should direct the Authority concerned to reengage the Petitioner as CO as before.

6. Learned Counsel for the contesting Opposite Party Nos. 3 and 4, reiterating the stand taken in the Counter, submitted that since the Petitioner remained on unauthorised leave when the pandemic COVID-19 was in pick, the Executive Officer, Jagatsinghpur Municipality (Opposite Party No.4) was justified to issue the relieve Order dated 30.05.2020, being so approved by the Collector & D.M., Jagatsinghpur (Opposite Party No.3). So far as the outcome of communication dated 17.06.2020 made by the Joint Secretary to Government, H & UD Dept., vide which the Executive Officer, Jagatsinghpur Municipality was requested to look into the grievances of the Petitioner and take appropriate action in terms of Department letter no.10153 dated 03.06.2020 (Annexure-9) so also the opinion of the Legal Adviser of Jagatsinghpur Municipality, as at Annexure-H/3 to the Counter, a query being made by this Court, Mr. Ray failed to apprise this Court as to the outcome of such communication so also opinion tendered by the Legal

Advisor of Jagatsinghpur Municipality on the ground of lack of instruction.

7. In view of the above, before dealing with the prayer made in the Writ Petition, it is apt to reproduce below the Clause-9 of the Agreement dated 01.03.2020 so also the Circular dated 03.06.2020.

"Clause-9 of the Agreement dated 01.03.2020:

"In case of involvement in illegal activities or allegations are levelled against the contractual Community Organizer, the competent Authority i.e. Collector-cum-Chairman, DUDA, of Jagatsinghpur Municipality will conduct an enquiry and after being satisfied Collector shall disengage her."

(Emphasis Supplied)

"GOVERNMENT OF ODISHA

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

No.HUD-UPA-HR-0007/2020/10153/HUD, BHUBANESWAR, dated the 3/6/2020

From

Sri Sangramjit Nayak, IAS

D.M.A. & Ex-Officio Additional Secretary to Govt

To

All Collectors,

All Commissioner of Municipal Corporation,

All Project Director, DUDAs,

All Executive Officer of Municipalities/NACs,

Sub: Evaluating the performance of the Community Organizers, MIS Computer Programmers & Accountant on Contractual basis – renewal of their annual Contract.

Ref: I) letter No.18461/HUD, dated 30.5.2013

II) Letter No.5706, dated 26.02.2018

Sir,

It is seen that ULBs keep writing to the Department complaining about the lack of satisfactory performance or on undesirable attitude of the Contractual C.Os/ MIS Computer Programmers / Accountants with a request to transfer or to take appropriate action against them. Some ULBs also resort to relieving the erring officials with a direction to report before the Department.

It may be recalled that the contract was made by the Appointing Authority with the Appointee for their appointment, in pursuance to this Department letter

No.18461/HUD, dated 30.05.2013 where in it was clearly mentioned that the second party (Appointee- Contractual Employee) has agreed to serve in the manner as required and perform the duties assigned by the first party (Appointing Authority – Collector / Commissioner) and he/she has agreed to be disengaged without any notice on ground of misconduct even during the operation of this agreement.

It has also been reiterated in this Department Letter No.5706, dated 26.02.2018 that in case of involvement in illegal activities or allegation are levelled against the contractual CO, Accountant & MIS Computer Programmer, the Competent Authority i.e. Collector-cum-Chairman, DUDA in case of Municipalities/NAC and Municipal Commissioners in case of Municipal Corporations will conduct an enquiry and after being satisfied the Collector/ Municipal Commissioner shall disengage him/her as it is a part of the contract agreement.

ULBs are therefore, advised to take appropriate action on the allegations/ complaints made against the Contractual C.Os/MIS Computer Programmers/ Accountants of your ULBs strictly adhering to the process indicated in the preceding para & as provided in the contract agreement.

However, it is further advised to renew the contract of the contractual CO/MIS/ ACCOUNTANTS as per the terms and conditions laid down in the agreement enclosed with this Department letter No.5706, dated 26.02.2018 strictly on the basis of performance only. The non-performance & disturbing elements can also be weeded out at the time of renewal of the contract every year. It may also be kept in the mind that these HR as mentioned above may not be disengaged without proper enquiry & justification. It is necessary to indicate that in case of a vacancy, it may not be easy on the part of the Department to provide a substitute. The annual renewal status of each contractual CO/MIS/ ACCOUNTANTS may be communicated to this Department for record and future reference.

It is once again reiterated that hence forth these contractual HR may not be relieved to join in the Department or complained against to the Department but dealt as mentioned above at the ULB level.”

Yours faithfully,

Sd/-

D.M.A. & Ex-Officio Additional Secretary to Govt.

Memo No.101154/HUD., Bhubaneswar, Dated the 3rd June, 2020

Copy forwarded to the Addl. Director, SUDA, Bhubaneswar for information and necessary action.

Sd/-

Deputy Secretary to Government”

(Emphasis Supplied)

8. From the above, it is amply clear that in terms of Clause-9 of the said Agreement, if any allegation are levelled against a contractual CO, the competent Authority i.e. Collector-cum-Chairman, DUDA of the concerned Municipality will conduct an enquiry and after being satisfied, he shall disengage him/her. Similarly, same thing has also been clarified in the Circular dated 03.06.2020 indicating therein for advising ULBs to take appropriate action on the allegations/complaints made against the contractual CO/MIS Computer Programmer/ Accountant of the concerned ULBs strictly adhering to the process indicated in the said Circular so also in terms of the contract/agreement entered with the contractual COs. However, so far as the present case of the Petitioner is concerned, for the first time it is so alleged in the Counter that the Petitioner remained unauthorizedly absent during out-break pandemic COVID-19 on the ground of her illness and to justify such absence, she has created/manufactured documents, as at Annexure-6 series. Admittedly, before issuance of Office Order dated 30.05.2020, no enquiry was conducted by the Collector-Cum-D.M., Jagatsinghpur giving opportunity of hearing to the Petitioner nor there is any mention in the impugned Office Order dated 30.05.2020 to the effect that after making an enquiry and being satisfied, the Collector accorded approval to relieve the Petitioner from duty.

Further, though a stand has been taken in the Counter that it was not so required, to make an enquiry in terms of Clause-9 of the Agreement so also Circular dated 03.06.2020 and the prayer of the Petitioner for withdrawal of her resignation was turned down as the same had already been approved by the Collector-Cum-D.M., Jagatsinghpur, but the document appended to the Counter Affidavit well demonstrates that such application for resignation tendered by the Petitioner on the ground of her ailment was never accepted by the concerned Authority. Rather, on submitting an application immediately thereafter for withdrawal of her application, she was duly communicated by the Executive Officer, Jagatsinghpur Municipality to continue in her service as usual and copy of the same was marked to various authorities, including the Collector.

9. At this juncture, this Court thinks it proper to extract the contents of the said communication dated 04.04.2020, which has been annexed to the Counter as Annexure-D/3.

"OFFICE OF THE MUNICIPALITY, JAGATSINGHPUR

No.4675/JSPM, Dt. 04-04-2020

To

Rasmi Badu

Community Organizer

Jagatsinghpur Municipality

Sub: Withdrawal of Resignation letter regarding.

Madam,

It is to inform you that your prayer regarding withdrawal of resignation application is considered by the Collector and District Magistrate-Cum-Chairman, DUDA, Jagatsinghpur and resignation application submitted via mail is not accepted. You may continue in service as usual. Further you are also intimated to be careful in future.

Yours faithfully

Sd/-

Executive Officer

Jagatsinghpur Municipality

Memo no.4676 Dt. 04-04-2020

Copy submitted to Additional Director, SUDA, Bhubaneswar, Odisha for favour of kind information.

Sd/-

Executive Officer

Jagatsinghpur Municipality

Memo no.4677 Dt. 04-04-2020

Copy submitted to Collector and District Magistrate, Jagatsinghpur for favour of kind information.

Sd/-

Executive Officer

Jagatsinghpur Municipality

Memo no.4678 Dt. 04-04-2020

Copy submitted to PD, DUDA, Jagatsinghpur for favour of kind information.

Sd/-

Executive Officer

Jagatsinghpur Municipality

(Emphasis Supplied)

10. In view of the admitted facts so also documents on record, this Court is of the view that the Office Order dated 30.05.2020, vide which the Petitioner was relieved from her duty w.e.f. 30.05.2020, being issued without following the procedure indicated vide Clause-9 of the Agreement dated 01.03.2020 so also

Circular dated 03.06.2020 reproduced above , which has been issued reiterating the contents of an earlier letter no.5706, dated 26.02.2018, is illegal, arbitrary and has been issued without following the principle of natural justice and is liable to be set aside. Furthermore, as is revealed from Annexure-4, the Petitioner was given outstanding remarks for the period from 22.12.2011 to 31.07.2017 and thereafter also till her disengagement i.e. on 30.05.2020, no communication was made by the competent Authority showing poor performance of the Petitioner to carry out her necessary duties as a CO. Accordingly, the impugned Order dated 30.05.2020 is set aside.

11. So far as relief part is concerned, this Court on 29.07.2020, while issuing notice to the contesting Opposite Party Nos. 3 and 4, as an interim, passed the following Order in I.A. No.8203 of 2020:

"I.A. No.8203 of 2020

Any engagement to the post of Community Organizer under Jagatsinghpur Municipality in place of the petitioner shall be subject to the result of the writ petition."

Since the impugned Order has been set aside, the Opposite Parties, more particularly Opposite Party Nos. 3 and 4, are directed to re-engage the Petitioner in the post/position, which she was holding as on 03.05.2020.

Such engagement shall be subject to existence of the Scheme and requirement in terms of Gazette Notification dated 09.04.2010, as at Annexure-1.

It is hereby clarified that if in the meantime any other person has been engaged in place of the Petitioner to manage the said job by entering into an agreement or otherwise, in view of the interim order dated.29.07.2020 passed in this case, he/she shall be disengaged forthwith and the Petitioner shall be re-engaged as directed above. The entire exercise has to be completed within four weeks from the date of production/communication of the certified copy of this judgment.

12. Accordingly, the Writ Petition stands disposed of. No order as to cost.

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