

Rajasthan State Electricity Board and Others

Vs

Laxman Lal and Others

Civil Appeal No. 2917 of 1985 with Civil Appeal Nos. 2900-2901, 2903-2916 & 2918-21 of 1985

(P.B. Sawant, N.M. Kasliwal JJ)

11.10.1990

JUDGMENT

N. M. KASLIWAL, J. -

1. All these civil appeals by special leave are directed against the judgments of the Rajasthan High Court dated May 11, 1984, May 21, 1984 and the reasons whereof pronounced on July 2, 1984. Controversy raised in all these cases is whether the respondents are entitled to pay scale No. 2 or pay scale No. 3.

2. The Government of India vide its Resolution dated May 20, 1966 constituted a General Wage Board for electricity undertakings for evolving wage structure, specialisation of nomenclature and job description. The recommendations of the said Wage Board were accepted by the Government of India in July 1970. The Prantiya Vidyut Mandal Mazdoor Federation (in short 'the Federation') recognised trade union of the employees of the Rajasthan State Electricity Board presented their demands before the Labour Department of the Government of Rajasthan for implementation of the recommendations of the Wage Board. While the said industrial dispute between the management of the Board and its employees was pending before the Conciliation Officer, a settlement was arrived at on February 22, 1972. By this agreement the parties agreed that the existing scale of pay of various categories of posts would be revised w.e.f. April 1, 1969. The schedule of the said agreement set out various categories of posts under different pay scales. At sl. No. 21 Meter Reader/Meter Checker was mentioned under scale No. 3 i.e. Rs 126-8-150-10-250. In pursuance to the above settlement the Board issued a notification dated March 22, 1972 revising the pay scales of its employees w.e.f. April 1, 1969. Subsequent to this agreement the Board entered into another agreement with the Federation on December 2, 1972 (hereinafter referred to as 'the second settlement'). In the second settlement, it was mentioned that this was done in view of some anomalies and difficulties which had cropped up in the course of implementation of previous agreements dated January 26, 1970; April 27, 1971; and July 28, 1972. It was also mentioned in the said settlement that it was considered desirable to remove the anomalies and clarify certain points by mutual negotiations. The settlement was made effective w.e.f. April 1, 1968. In the second settlement it was agreed to have two categories for Meter Readers i.e. Meter Reader I/Meter Checker I and Meter Reader II/Meter Checker II. The relevant clause in this regard reads as under :

"II. Under pay scale No. 3 technical read 21" Meter Reader I/Meter Checker I and under pay scale No. 2 technical, insert "7 Meter Reader II/Meter Checker II" and insert the following Note below pay scale No. 2 :

Meter Reader II/Meter Checker II appointed/fixed, promoted/adjusted on or before

March 31, 1968 will be fixed in pay scale No. 3 instead of pay scale No. 2."

3. The Board in accordance with the second settlement issued another Notification dated December 6, 1972 whereby the previous Notification dated March 22, 1972 was amended. Some of the employees, namely, Jagdish Prasad, Brij Mohan, Madho Singh, Prakash Chander, S. Samuel, Brij Lal and Chander Bhan filed writ petitions in the High Court of Judicature for Rajasthan at Jodhpur and challenged the Notification dated December 6, 1972. It may be noted that all these employees were appointees before December 6, 1972. Learned Single Judge of the High Court by judgment dated March 21, 1979 allowed the writ petitions and quashed the Notification dated December 6, 1972 mainly on the ground that the second settlement could not have been made as no conciliation proceedings were pending before such settlement and that the date April 1, 1968 mentioned in the notification for making the settlement effective was arbitrary and without basis. The Board filed an appeal before the Division Bench which by their judgment dated December 19, 1979 dismissed the same and upheld the judgment of the learned Single Judge. The Board implemented the judgment of the High Court in respect of Jagdish Prasad and others and issued orders to provide scale No. 3 to all Meter Readers appointed up to December 6, 1972.

4. After December 6, 1972 some more persons were appointed on the post of Meter Reader/Meter Checker Grade II i.e. in the pay scale of Rs 80-5-110-6-152-7-194 between the period 1972-1979. Some of the employees against filed writ petitions in the High Court. The High Court vide its judgment dated March 29, 1982 allowed the writ petitions on the ground that the second settlement had already been quashed by the earlier judgment given in Brij Lal v. Rajasthan State Electricity Board [1979 WLN (UC) 221]. The High Court inter alia held and observed as under :

"Once the second settlement dated December 6, 1972, no longer exists in view of non-compliance with Section 19(2) of the aforesaid Act and in view of the decision of this Court in Brij Lal case [1979 WLN (UC) 221], the only settlement which can be said to be in existence is the first settlement dated February 22, 1972. The aforesaid settlement only provides one grade (scale No. 3 Item No. 21) for Meter Reader/Checker, and, therefore, the petitioner is entitled to be fixed in that grade. Merely because the post of Meter Reader II/Checker II was advertised with pay scale No. 2 and the petitioner applied and was selected, it cannot be said that the petitioner is estopped now from challenging his fixation in the aforesaid pay scale. There can be no estoppel against statute. The petitioner was not knowing and could not know that it is the first settlement dated February 22, 1972 which was in force and the settlement dated December 6, 1972 was invalid, and therefore, no case of estoppel is made out against the petitioner.

Once this Court had quashed the second settlement dated December 6, 1972 and held that the first settlement dated February 22, 1972 was in force, it was necessary for the Board to have fixed the Meter Reader/Meter Checker in scale No. 3 Item No. 21 of Schedule 'A' to the first settlement. The Board in spite of demand made to it by the petitioner in this behalf refused to do it."

5. A bunch of 35 identical writ petitions directing the Board to fix the petitioners in the pay scale No. 3 (Rs 126-250) as revised from time to time were allowed by learned Single Judge of the High Court by a common order dated November 15, 1983. The Board filed special appeals before the Division Bench. The Division Bench dismissed the special appeals by orders dated May 11, 1984, May 21, 1984 and observed that the reasons will be recorded later on. The Division Bench

thereafter pronounced the reasons by order dated July 2, 1984. The Board has now filed these appeals restricted to such employees who were appointed as Meter Readers/Checkers grade II after April 1, 1974.

6. It may also be mentioned at this stage that under clause (ix) of the first settlement dated February 22, 1972 it was mentioned as under :

"(ix) This agreement shall remain in force up to March 31, 1974 and the Federation agrees not to raise any demand in respect of any of the matters covered by this agreement during the period of the operation of the agreement."

It may also be mentioned that in exercise of the powers conferred by Section 79, sub-sections (c) and (k) of the Electricity (Supply) Act, 1948, the Board after obtaining concurrences of the Government of Rajasthan and directives issued under Section 70(A) of the said Act and taking into consideration the suggestions made by the representatives of the employees, made regulations which are called Rajasthan State Electricity Board Employees (Emoluments) Regulations, 1978. These regulations were made applicable retrospectively from April 1, 1974. Under these regulations post of Meter Reader II/Meter Checker II was mentioned in scale No. 2 as revised in the pay scale of Rs 260-8-324-10-464.

7. Dr L.M. Singhvi, senior advocate appearing on behalf of the Board contended that irrespective of the earlier judgment given by the High Court in Brij Lal v. RSEB [1979 WLN (UC) 221] quashing the second settlement dated December 6, 1972 the present appeals having been filed against the Meter Readers appointed on or after April 1, 1974, they are not entitled to scale No. 3 as the first settlement dated February 22, 1972 was to remain in force up to March 31, 1974. It was also argued that in the appointment orders of the respondent employees appointed after April 1, 1974, it was clearly mentioned that they were appointed as Meter Reader/Meter Checker II in pay scale No. 2 i.e. Rs 80-194.

8. Dr Singhvi further argued that the Board had also made regulations which had statutory force and were made applicable retrospectively from April 1, 1974. Under these regulations also the post of Meter Reader II/Meter Checker II was mentioned in scale No. 2. It was thus contended that considering the matter from any angle, the respondents were not entitled to scale No. 3 but were only entitled to scale No. 2 as revised from time to time. It was also pointed out by Dr Singhvi that without prejudice to the above submissions so far as respondents Laxman Lal, Sita Ram and Madhav Lal are concerned, they were otherwise also not entitled to get any relief inasmuch as they were appointed Meter Readers II after the notification of the Regulations of 1978. The Regulations were notified vide notification No. RSEB.F.RRBS/D. 41 dated May 4, 1978 whereas Laxman Lal, Sita Ram and Madhav Lal were appointed respectively on August 19, 1978, October 8, 1979 and April 9, 1979.

9. Learned counsel for the respondent employees on the other hand submitted that in the settlement dated February 22, 1972 no distinction was made of Meter Reader grade I or II and the post of Meter Reader/Meter Checker was placed in pay scale No. 3. It was submitted that validity of second settlement and the notification dated December 6, 1972 was challenged in Brij Lal case [1979 WLN (UC) 221] and a Division Bench of the High Court had quashed the aforesaid settlement and the said judgment was not challenged by the Board before this Hon'ble Court and the same had become final. Thereafter an arbitration award was given in 1979 between the Board and the Federation under which two categories of Meter Readers/Meter Checkers were again made. According to this

award Meter Reader/Meter Checker II was placed in the pay scale No. 2 of Rs 80-194 and Meter Reader/Meter Checker I was placed in the pay scale No. 3 of Rs 126-250. It was thus submitted that all the Meter Readers appointed up to 1979 were entitled to scale No. 3. It was further submitted that the first settlement dated February 22, 1972 and the notification issued thereafter on March 22, 1972 continued to operate and there was only one pay scale of Rs 126-250 for all the Meter Readers and there being no classification of grade I or II, the pay scale of Rs 126-250 remained in force, till the arbitration award was given on June 15, 1979. It was submitted that all the respondents having been appointed prior to June 15, 1979, they were entitled to pay scale No. 3. As regards the stand taken by the Board that it had framed Regulations regarding the fixation of pay scales it was contended that no such plea was taken in reply to the writ petitions filed by the employees. It was pointed out that the contention with regard to the first settlement having come to an end on March 31, 1974 as well as the contention revised on the basis of regulations was rightly negated by the Division Bench of the High Court in the following manner :

"It was contended by the learned counsel for the appellants that the learned Single Judge did not take into consideration the fact that first settlement came to an end on March 31, 1974 and was not in force after that date. He submitted that the Board had powers under Section 79(c) and (k) of the Electricity (Supply) Act, 1948 to frame regulations regarding the fixation of pay scales. Learned counsel for the appellants was asked to show from the writ petitions whether this point was taken in the writ petitions or not. Learned counsel for the appellants candidly admitted that it was not raised in the writ petitions filed by the petitioners. It was, then, put to the learned counsel whether this point was argued before the learned Single Judge. Mr S.N. Deedwania submitted that in the absence of the affidavit of the counsel who argued on behalf of the appellants before the learned Single Judge positive assertion to that effect cannot be made.

In the memo of appeal this ground, of course, has been taken but not in the manner in which it has been stated hereinabove. As this point was not taken in the writ petitions and it was not argued before the learned Single Judge, we do not consider it necessary to examine it. We shall examine the validity of the order under appeal on the basis of the grounds that were argued on behalf of the petitioners before the learned Single Judge."

10. It was further contended that during the pendency of these appeals additional affidavit was filed on behalf of Laxman Lal respondent. It was pointed out in the additional affidavit that Shri Udai Lal and Shri Shyam Lal were appointed as Meter Readers vide order dated September 6, 1974. These persons filed Writ Petition Nos. 1191 of 1981 and 1181 of 1981 respectively. The aforesaid writ petitions were allowed by the High Court vide judgment dated March 28, 1982. One Shri Prem Shankar who was appointed as Meter Reader vide order dated May 16, 1974 also filed a Writ Petition No. 120 of 1981 in the High Court and it was also allowed by order dated March 28, 1982. The Board did not challenge the aforesaid orders and issued order on August 23, 1982 implementing the judgment of the High Court. The above examples were given in order to show that these persons were also appointed after April 1, 1974 and in their cases also relief was granted by the High Court and the Board never challenged the aforesaid judgments given in favour of Udai Lal, Shyam Lal and Prem Shankar. It has also been submitted that the Board has also published a revised revenue manual on September 1, 1986 in which vide para 124 duties of Meter Readers have been laid down. It is contended that in the manual no different duties have been prescribed for Meter Reader II and Meter Reader I and thus in the discharge of duties there is no difference.

11. A supplementary affidavit has been filed by Shri R.C. Harit, Deputy Director, Rajasthan State Electricity Board. It has been submitted in the supplementary affidavit as under :

"That it so happened that after the aforesaid judgment dated December 19, 1979 in the matter of RSEB v. Jagdish Prasad Brij Lal D.B. Appeal No. 179 of 1979 some other Meter Readers on the basis of this judgment filed various other writ petitions. In these writ petitions the question about the applicability of Regulations or the question as to whether the respondent can challenge his own appointment by which they were appointed to Meter Reader II post were not at all raised or directed by the High Court. The High Court decided the said writ petitions only on the basis of the earlier judgment in the matter of RSEB v. Jagdish Prasad (Brij Lal). The appellant-Board implemented the said order. The respondent is trying to raise the said question which was neither been decided by the High Court and has been raised for the first time in this supplementary affidavit. On account of lapse of time, the appellant is finding it difficult to give reply. The deponent has tried his best to locate the records but in such a short period he could not get the file of the case which was decided about eight years back as it appears to have been mixed up in the old record.

That the order passed in the matter of Shanti Lal was a judgment inter partes and, therefore, simply because the Board did not challenge the said order, it does not mean that the respondent can also take advantage of the same and can raise the question of equal pay for equal work. In this the appellants further state that all the persons except respondent Shri Lahar Singh and Gharsi Lal (Geharilal) in civil appeal in the present case were appointed after September 7, 1974 and May 16, 1974 i.e. the date on which three persons whose matters were decided along with Shanti Lal's case were appointed."

12. We have thoroughly examined the record and have considered the arguments advanced by learned counsel for the parties. It may be noted that all the above appeals are in respect of such employees who were appointed after April 1, 1974. In the appointment orders of all the respondents it was specifically mentioned that they were appointed as Meter Reader grade II in the pay scale of Rs 80-194 (subsequently revised to Rs 260-464). In clause (ix) of the first settlement dated February 22, 1972 it was clearly mentioned that this agreement shall remain in force up to March 31, 1974. The stand taken by the Board all along was that this settlement was subsequently amended by another agreement (second settlement) on December 2, 1972. In this second settlement certain anomalies and difficulties had cropped up in the course of implementation of earlier settlements and hence some clarifications were made by mutual negotiations. The clarifications relevant for our purpose were that the first settlement was made effective w.e.f. April 1, 1968 instead of April 1, 1969 and two categories were fixed for Meter Readers i.e. Meter Reader I/Meter Checker I and Meter Reader II/Meter Checker II. Necessary amendments were made in the schedules annexed to the settlement according to which under pay scale No. 3 at Item No. 21 Meter Reader I/Meter Checker I and under pay scale No. 2 at Item No. 7 Meter Reader II/Meter Checker II were inserted. This second settlement was subsequently notified by a Notification dated December 6, 1972. According to the Board this second settlement was merely a clarification settlement and not a new settlement inasmuch as it sought to make clear the ambiguity which had cropped up in the first settlement in the matter of fixing the grades and pay scales of the Meter Reader/Meter Checkers. The Notification dated December 6, 1972 which related to the second settlement dated December 2, 1972 was challenged by some of the employees by filing writ petitions in the High Court and learned Single Judge by judgment dated March 21, 1979 allowed the writ petitions and quashed the

notification dated December 6, 1972. It may be noted that the second settlement was quashed on the ground that the second settlement could not have been made as no conciliation proceedings were pending before such settlement and the date April 1, 1968 mentioned in the notification was arbitrary and without any basis. An appeal filed by the Board against the aforesaid decision was dismissed by the Division Bench of the High Court on December 19, 1979. This litigation was commenced by such employees who were appointed prior to December 6, 1972. Subsequently employees appointed between the period 1972-1979 filed writ petitions in the High Court. The stand taken by these employees was that the Notification dated December 6, 1972 had already been quashed by the High Court and as such they were to be governed by the first settlement dated February 22, 1972 in which there was only one category of Meter Reader/Meter Checker to whom pay scale No. 3 had been given and as such they were also entitled to pay scale No. 3. The High Court allowed the writ petitions and granted pay scale No. 3 to all the 35 petitioners. The Board has now come before this Court against such employees who were appointed after April 1, 1974. The contention of the Board is that even if for arguments' sake the earlier decision given by the High Court may be considered as final, that was in respect of employees who were appointed before December 6, 1972. As regards the present employees it has been submitted that no benefit can be granted in their case as the first settlement itself was to remain in force up to March 31, 1974 and in any case in the appointment orders of the respondents it was clearly mentioned that they were appointed as Meter Reader/Meter Checker grade II in the pay scale No. 2. It has also been urged before us that the Board had made Rajasthan State Electricity Employees (Emoluments) Regulations, 1978 published on May 4, 1978 but the same were deemed to have been made applicable from April 1, 1974. Under these regulations post of Meter Reader II/Meter Checker II in pay scale No. 2 and Meter Reader I/Meter Checker I have been placed in pay scale No. 3.

13. Learned counsel for the employees-respondents contended that though according to clause (ix) of the first settlement dated February 22, 1972, it was mentioned that the same will remain in force till March 31, 1974 yet the same would remain in operation until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement as provided under sub-section (2) of Section 19 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). It has been submitted that no such notice was given by the Board and the second settlement dated December 2, 1972 and Notification dated December 6, 1972 had already been quashed by the High Court in Brij Lal case [1979 WLN (UC) 221] and the same having become final, the first settlement would govern the parties. Reliance in support of the above contention is placed in Life Insurance Corporation of India v. D.J. Bahadur [(1981) 1 SCC 315 : 1981 SCC (L & S) 111 : 1980 Lab IC 1218]. Our attention was drawn to para 33 of the above case which reads as under : (SCC pp. 340-41, para 34)

"The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award of settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award of settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award on the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms,

but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end - order in society - can it commit functional hara-kiri by leaving a conflict situation to lawless void ?"

In our view the above Section 19(2) and 19(6) of the Act cannot give any benefit to the respondents in the facts of the present case. It is not in dispute that the period of the first settlement was agreed up to March 31, 1974. The question which calls for our consideration is not the applicability of the first settlement, but the real question to be considered is whether Board could have appointed or not the respondents on the post of Meter Reader/Meter Checker grade II in pay scale No. 2 after April 1, 1974. The respondents/employees in the present case want to take advantage of the first settlement simply on the ground that it did not make any mention of Meter Reader/Meter Checker grade I or II and it simply made mention of Meter Reader/Meter Checker to whom pay scale No. 3 was given. The above ambiguity was clarified by an agreement between the Board and the Union representing the employees as early as on December 2, 1972 itself to the effect that Meter Reader/Meter Checker can be placed in two different grades. After this there was no restriction on the Board to make appointment of the Meter Reader/Meter Checker in grade II after April 1, 1974. That apart there was clear mention in the appointment orders of the respondents that they were appointed as Meter Reader/Meter Checker grade II in pay scale No. 2. Learned counsel for the respondents/employees were unable to place any law, rule or regulation of the Board to show that the Board had no power to make such appointments of the Meter Reader/Meter Checker in grade II. The Board had already taken the stand that first settlement was clarified by the second settlement and as such even if the High Court had quashed the second settlement, it was at least a sufficient notice within the meaning of Section 19(2) of the Act that the Board had terminated the first settlement after March 31, 1974. The Regulations deemed to have come into force from April 1, 1974 also clearly provided for pay scale No. 2 for Meter Reader/Meter Checker grade II.

14. The Division Bench of the High Court refused to consider the above arguments placed on behalf of the Board on the ground that learned counsel for the appellants was asked to show from the writ petitions whether this point was taken in the writ petitions or not and the learned counsel candidly admitted that it was not raised in the writ petitions filed by the petitioners. The High Court further observed in this regard that as this point was not taken in the writ petitions and it was not argued before the learned Single Judge, they did not consider it necessary to examine it. We have already extracted in extenso the observations of the High Court in this regard in the earlier part of this judgment. There is a complete fallacy, in the above order inasmuch as the Board was not the petitioner before the High Court and there was no question of taking any such ground in the writ petitions. In one of the above appeals No. 2901 of 1985 Rajasthan State Electricity Board v. Sharad Chander Nagar reply to the writ petition filed by the Board has been placed on record as Annexure 'C'. In the said reply in para 8 it has been stated as under :

"That the contents of para 8 of the writ petition are wrong and denied. The petitioner was not appointed at the time of settlement dated February 22, 1972. The Wage Board settlement dated February 22, 1972, which was in force up to March 31, 1974, and thereafter the Rajasthan State Electricity Board Employees (Emoluments) Regulations, 1978 was (sic) come into force with effect from April 1, 1974 and wages of all the employees were revised in pursuance of the Rajasthan State Electricity Board (Emoluments) Regulation, 1978. The copy of the Board (Emoluments) Regulation, 1978 is submitted herewith as Annexure 'B'".

15. Apart from the above circumstances of the case the Board in its reply to the writ petition also took the stand that the post of the Meter Reader grade I is a promotion post while the post of Meter Reader grade II is filled by direct recruitment. The Rajasthan State Electricity Board (Emoluments) Regulation, 1978 made in exercise of the powers conferred by Section 79 sub-sections (c) and (k) of the Electricity (Supply) Act, 1948 have statutory force and it has been clearly mentioned that they shall be deemed to have been made applicable from April 1, 1974. The Board had set up their case in the reply to the writ petition on the basis of these Regulations and it was the duty of the Division Bench of the High Court to have looked into the reply filed by the Board and to decide the effect of such statutory regulations in the present case.

16. The Board under clause (c) of Regulation 79 was fully empowered to provide for the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service or under the residuary clause (k) for any other matter arising out of the Board's function under this Act for which it is necessary or expedient to make regulations. We have gone through the Regulations which have been brought into force from April 1, 1974 and in Schedule II group 'B' at Item No. 7 Meter Reader II/Meter Checker II has been fixed in the revised pay scale of Rs 260-464 (original scale Rs 80-194) and in group 'C' at Item No. 21 Meter Reader I/Meter Checker I in scale No. 3 revised pay scale Rs 370-570 (original scale Rs 126-250). The High Court committed a serious error in ignoring clause (ix) of the first settlement dated February 22, 1972 as well as the Regulations made by the Board in 1978.

17. So far as the cases of Udai Lal, Shyam Lal and Prem Shankar are concerned even if the Board did not challenge the order of the High Court dated March 28, 1982 in their cases, it cannot act as res judicata or as estoppel against the Board in challenging the present order of the High Court before this Court. There is no question of applying the principle of equal pay for equal work in the facts and circumstances of this case and to allow Meter Reader II/Meter Checker grade II, the pay scale of Meter Reader/Meter Checker grade I. Apart from that, these controversies have been raised by the respondents for the first time by filing affidavits before this Court at the fag end of arguments, and these questions being mixed questions of fact and law, cannot be permitted to be raised now.

18. In the result, we allow all these appeals, set aside the judgment of the High Court, and dismiss all the writ petitions. In the facts and circumstances of the case we direct the parties to bear their own costs.

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