

CITY MAYOR ROGELIO R. DEBULGADO AND VICTORIA T. DEBULGADO, PETITIONERS, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 111471. September 26, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioner Rogelio R. Debulgado is the incumbent Mayor of the City of San Carlos, Negros Occidental. On 1 October 1992, petitioner Mayor appointed his wife, petitioner Victoria T. Debulgado, as General Services Officer, that is, as head of the Office of General Services[1] of the City Government of San Carlos.

Petitioner Victoria was one of three (3) employees of the City Government who were considered for the position of General Services Officer. Before her promotion in 1992, she had been in the service of the City Government for about thirty-two (32) years. She joined the City Government on 3 January 1961 as Assistant License Clerk. Through the years, she rose from the ranks, successively occupying the following positions:

- (a) Assistant Chief of the License & Fees Division, from 1 July 1965 to 30 June 1973;
- (b) Chief of the License and Fees Division, from 1 July 1973 to 1 January 1981;
- (c) Cashier, from 2 January 1981 to 30 June 1989; and
- (d) Cashier IV, from 1 July 1989 to 30 September 1992.[2]

On 1 October 1992, petitioner Victoria assumed the new post, and commenced discharging the functions, of General Services Officer of San Carlos City and receiving the regular salary attached to that position.

On 16 December 1992, public respondent Civil Service Commission (“Commission”) received a letter[3] from Congressman Tranquilino B. Carmona of the First District of Negros Occidental, calling attention to the promotional appointment issued by petitioner Mayor in favor of his wife.

The Commission directed its Regional Office No. 6-Iloilo City to submit a report on the appointment of petitioner Victoria.

From the report submitted by Director Jesse J. Caberoy of the Iloilo City-CSRO No. 6, the Commission found that petitioner Mayor was the lawful husband of the appointee, petitioner Victoria, the two (2) having been married sometime in 1964. Director Caberoy also reported that the appointment papers prepared by the Office of the City Mayor of San Carlos were submitted to the Bacolod City CSC-Field Office on 28 October 1992, and that the appointment was thereafter approved by Director Purita H. Escobia of that CSC-Field Office, on 18 November 1992.

Acting on the report of Director Caberoy, the Commission, in its Resolution No. 93-1427 dated 13 April 1993, recalled the approval issued by Director Escobia and disapproved the promotion of petitioner Victoria to the

position of General Services Officer of San Carlos City upon the ground that that promotion violated the statutory prohibition against nepotism appointments.

On 14 June 1993, petitioner Mayor and petitioner Victoria received a copy of Resolution No. 93-1427 of the Commission.^[4] Petitioners moved for reconsideration, contending that the statutory prohibition against nepotism was not applicable to the appointment of Victoria as General Services Officer. Petitioners also asserted that the Commission had deprived petitioner Victoria of her right to due process by unilaterally revoking her appointment. The motion for reconsideration was denied by the Commission on 21 July 1993.

In this Petition for Certiorari, petitioner Mayor and petitioner Victoria contend that the Commission had gravely abused its discretion in withdrawing and disapproving petitioner Victoria's promotional appointment. Petitioners assert that Victoria can no longer be removed from the position of General Services Officer without giving her an opportunity to be heard and to answer the charge of nepotism.

Petitioner Mayor denies that he had been motivated by personal reasons when he appointed his wife to the new post. He states that his wife was the most qualified among the candidates for appointment to that position, she having worked for the City Government for thirty-two (32) years and being highly recommended by the OIC-Treasurer of San Carlos City.^[5] It is also claimed by petitioner Mayor that his choice of his wife for the position was concurred in by the Sangguniang Panglungsod.^[6] He further avers that he had consulted the Field and Regional Officers of the Commission in Bacolod City, and raised the question of applicability of the prohibition against nepotism to the then proposed promotion of his wife in one of the seminars conducted by the Commission's Regional Office held in San Carlos City on 21 and 22 September 1992. According to petitioner Mayor, one Gregorio C. Agdon, a supervising personnel specialist in the Commission's Bacolod Office, informed him that the promotional appointment was not covered by the prohibition.^[7]

The basic contention of petitioners is that the prohibition against nepotism appointments is applicable only to original appointments and not to promotional appointments. They believe that because petitioner Victoria was already in the service of the City Government before she married petitioner Mayor, the reason behind the prohibition no longer applied to her promotional appointment. Petitioners also affirm that petitioner Victoria deserves to be promoted to General Services Officer, considering her long and faithful service to the City Government.^[8]

The task before this Court is, accordingly, two-fold:

- (1) to determine whether a promotional appointment is covered by the legal prohibition against nepotism, or whether that prohibition applies only to original appointments to the Civil Service; and
- (2) to determine whether the Commission had gravely abused its discretion in recalling and disapproving the promotional appointment given to petitioner Victoria after the Commission, through Director Escobia, had earlier approved that same appointment, without giving an opportunity to petitioner Victoria to explain her side on the matter.

‘I

The prohibitory norm against nepotism in the public service is set out in Section 59, Book V of the Revised Administrative Code of 1987 (also known as E.O. No. 292). Section 59 reads as follows:

“Sec. 59. Nepotism --- (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section the word ‘relative’ and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(2) The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in subsection (1) shall not be applicable to the case of a member of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

(3) In order to give immediate effect to these provisions, cases of previous appointment which are in contravention hereof shall be corrected by transfer and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives who were appointed in violation of these provisions.” (Underscoring supplied).

Section 6 of Rule XVIII, of the “Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws,” issued on 27 December 1991, implementing, among other things, the abovequoted Section 59, provides as follows:

“Sec. 6. No appointments in the national, provincial, city and municipal government or in any branch or instrumentality thereof, including government-owned or controlled corporations with original charters shall be made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over the appointee.

Unless otherwise specifically provided by law, as used in this Section, the word ‘relative’ and the members of the family referred to are those related within the third degree either of consanguinity or of affinity.

The following are exempted from the operation of the rules on nepotism: (a) persons employed in a confidential capacity; (b) teachers; (c) physicians; (d) members of the Armed Forces of the Philippines. Provided, however, That in each particular instance full report of such appointment shall be made to the Commission.

The restriction mentioned in the first paragraph of this Section shall not be applicable to the case of a member of any family who after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.

Cases of previous appointment which are in contravention hereof shall be corrected by transfer, and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives who were appointed in violation of these provisions.” (Underscoring supplied)

It will be noted that the abovequoted Section 6 of Implementing Rule XVIII essentially tracks the provisions of Section 59, Book V of E.O. No. 292.[9]

We turn, therefore, to an analysis of Section 59, Book V of E.O. No. 292, quoted above. The noteworthy fact may be pointed out, at the outset, that Section 59 as it exists today has been in our statute books in substantially identical form and language for at least thirty (30) years.[10]

A textual examination of Section 59 at once reveals that the prohibition was cast in comprehensive and unqualified terms. Firstly, it explicitly covers “all appointments”, without seeking to make any distinction between differing kinds or types of appointments. Secondly, Section 59 covers all appointments to the national,

provincial, city and municipal governments, as well as any branch or instrumentality thereof and all government owned or controlled corporations. Thirdly, there is a list of exceptions set out in Section 59 itself, but it is a short list:

- (a) persons employed in a confidential capacity;
- (b) teachers;
- (c) physicians; and
- (d) members of the Armed Forces of the Philippines.

The list has not been added to or subtracted from for the past thirty (30) years. The list does not contain words like “and other similar positions.” Thus, the list appears to us to be a closed one, at least closed until lengthened or shortened by Congress.

Section 59 of Book V, E.O. No. 292 should, of course, be read in connection with the Omnibus Implementing Rules. Additional light is shed on the issue we here address by some provisions of these Rules. Section 1, Rule V of the Omnibus Implementing Rules reads as follows:

“Section 1. All appointments in the career service shall be made only according to merit and fitness to be determined as far as practicable by competitive examinations.

As used in these Rules, any action denoting movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include promotion, transfer, reinstatement, reemployment, detail, secondment, reassignment, demotion and separation. All original appointments and personnel actions shall be in accordance with these Rules and with other regulations and standards that may be promulgated by the Commission.” (Underscoring supplied)

Section 1, Rule VII of the same Rules also bears upon our inquiry:

“Section 1. The following constitute personnel actions: original appointment, appointment through certification, promotion, transfer, reinstatement, reemployment, detail, secondment, demotion and separation.”

(Underscoring supplied)

Under the abovequoted provisions of the Implementing Rules, both an original appointment and a promotion are particular species of personnel action. The original appointment of a civil service employee and all subsequent personnel actions undertaken by or in respect of that employee such as promotion, transfer, reinstatement, re-employment, etc., must comply with the Implementing Rules including, of course, the prohibition against nepotism in Rule XVIII. To the extent that all personnel actions occurring after an original appointment, require the issuance of a new appointment to another position (or to the original position in case of reinstatement), we believe that such appointment must comply with all applicable rules and prohibitions, including the statutory and regulatory prohibition against nepotism. To limit the thrust of the prohibition against nepotism to the appointment issued at the time of initial entry into the government service, and to insulate from that prohibition appointments subsequently issued when personnel actions are thereafter taken in respect of the same employee, would be basically to render that prohibition, in the words of *Laurel V, etc. v. Civil Service Commission*,^[11] “meaningless and toothless.”

Inquiry into the basic purpose or objective of the prohibition against nepotism also strongly indicates that that prohibition was intended to be a comprehensive one. Section 1, Book V, E.O. No. 292 sets out the basic policy which pervades all the provisions of our Civil Service law, including Section 59 thereof:

“Sec. 1. Declaration of Policy. -- The State shall insure and promote the Constitutional mandate that appointments in the Civil Service shall be made only according to merit and fitness; x x x.” (Underscoring supplied)

Put succinctly, that purpose is to ensure that all appointments and other personnel actions in the civil service should be based on merit and fitness and should never depend on how close or intimate an appointee is to the appointing power.[12]

Laurel V, etc. v. Civil Service Commission *supra*, is instructive in this connection. In that case, petitioner Governor of Batangas Province appointed or designated his brother, Benjamin Laurel, who had been holding a promotional appointment as Civil Security Officer, a position classified as “primarily confidential” by the Civil Service, to the position of Provincial Administrator, a position in the Career Civil Service. This Court held that the appointment or designation as Acting Provincial Administrator was violative of the prohibition against nepotism, then embodied in Section 49, P.D. No. 807. Moreover, the Court emphatically agreed with the Civil Service Commission that “although what was extended to Benjamin was merely a designation and not an appointment, x x x the prohibitive mantle on nepotism would include designation, because what cannot be done directly, cannot be done indirectly:”

“We cannot accept petitioner’s view. His specious and tenuous distinction between appointment and designation is nothing more than either a ploy ingeniously conceived to circumvent the rigid rule on nepotism or a last-ditch maneuver to cushion the impact of its violation. The rule admits of no distinction between appointment and designation. Designation is also defined as ‘an appointment or assignment to a particular office’; and ‘to designate’ means ‘to indicate, select, appoint or set apart for a purpose of duty.’ (Black’s Law Dictionary, Fifth ed., 402)

x x x x x x x x

It seems clear to Us that Section 49 of P.D. No. 807 does not suggest that designation should be differentiated from appointment. Reading this section with Section 25 of said decree, career service positions may be filled up only by appointment, either permanent or temporary; hence a designation of a person to fill it up because it is vacant, is necessarily included in the term appointment, for it precisely accomplishes the same purpose. Moreover, if a designation is not to be deemed included in the term appointment under Section 49 of P.D. No. 807, then the prohibition on nepotism would be meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Indeed, as correctly stated by public respondent, ‘what cannot be done directly cannot be done indirectly.’”[13] (Underscoring partly in the original and partly supplied; citation omitted)

Thus, the Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive.

One of the contentions of petitioner in the case at bar is that the ratio of the prohibition against nepotism is not applicable here because petitioner Victoria was already in the government service at the time petitioners were married in 1964. It is not disputed that the original 1961 appointment of petitioner Victoria as an Assistant License Clerk was not a nepotic appointment. Indeed, Section 59 itself states, in the 4th paragraph thereof, that the prohibition against nepotism is not

“applicable to the case of a member of any family who, after his or her appointment to any position in any office or bureau, contracts marriage with someone in the same office or bureau, in which event the employment or retention therein of both husband and wife may be allowed.” (Underscoring supplied)

The subsequent marriage of one to the other of petitioners did not retroactively convert the original appointment of petitioner Victoria into a prohibited nepotic one. It is the promotional appointment issued by petitioner Mayor

to petitioner Victoria in 1 October 1982 that is at stake.

Here, the basic argument of petitioners is that to read the prohibition in Section 59, Book V of E.O. No. 292 as applicable both to original and promotional or subsequent appointments, would be to deprive the government of the services of loyal and faithful employees who would thereby be penalized simply because the appointing or recommending official happens to be related to the employee within the third degree of consanguinity or affinity.

A major difficulty with petitioners' argument is that it tends to prove too much. For the appointee, whether in an original or a promotional appointment, may in fact be quite loyal and efficient and hard-working; yet that circumstance will not prevent the application of the prohibition certainly in respect of the original appointment. The Court is not unaware of the difficulties that the comprehensive prohibition against nepotism would impose upon petitioner Victoria and others who maybe in the same position. It is essential to stress, however, that the prohibition applies quite without regard to the actual merits of the proposed appointee and to the good intentions of the appointing or recommending authority, and that the prohibition against nepotism in appointments whether original or promotional, is not intended by the legislative authority to penalize faithful service.

The purpose of Section 59 which shines through the comprehensive and unqualified language in which it was cast and has remained for decades, is precisely to take out of the discretion of the appointing and recommending authority the matter of appointing or recommending for appointment a relative. In other words, Section 59 insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested. The importance of this statutory objective is difficult to overstress in the culture in which we live and work in the Philippines, where family bonds remain, in general, compelling and cohesive.

The conclusion we reach is that Section 59, Book V, E.O. No. 292 means exactly what it says in plain and ordinary language: it refers to "all appointments" whether original or promotional in nature. The public policy embodied in Section 59 is clearly fundamental in importance, and the Court has neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there.

It follows that the promotional appointment of petitioner Victoria by her husband, petitioner Mayor, falls within the prohibited class of appointments: the prohibited relationship between the appointing authority (petitioner Mayor) and the appointee (wife Victoria) existed at the time the promotional appointment was issued. It is scarcely necessary to add that the reasons which may have moved petitioner Mayor to issue the prohibited appointment are, as a matter of law, not relevant in this connection.[14]

II

We turn to the second issue where petitioners contend that when the promotional appointment of petitioner Victoria was approved by Director Escobia, CSC Field Office, Bacolod City, that appointment became complete. When petitioner Victoria took her oath of office and commenced the discharge of the duties of a General Services Officer, she acquired a vested right to that position and cannot, according to petitioners, be removed from that position without due process of law.

This argument misconceives the nature of the action taken by the respondent Commission. That action was not the imposition of an administrative disciplinary measure upon petitioner Victoria, nor upon petitioner Mayor. There were no administrative charges in respect of which petitioner Victoria would have been entitled to notice and hearing. The Commission, in approving or disapproving an appointment, only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualifications. At all events, as the Solicitor General has noted, petitioner Victoria was afforded an opportunity to be heard when she filed a motion for reconsideration with the

Commission and there challenged the disapproval by the Commission.

The action of the Commission was, in other words, taken in implementation of Section 59, Book V, E.O. No. 292 and the relevant Implementing Regulations. Because the promotional appointment in favor of petitioner Victoria was a violation of Section 59, it was null and void as being *contra legem*. Section 9 of Rule V of the Omnibus Implementing Regulations sets out the principal legal consequence of an appointment issued in disregard of the statutory prohibition:

“Sec. 9. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the Commission. However, an appointment may be void from the beginning due to fraud on the part of the appointee or because it was issued in violation of law.” (Underscoring supplied)

A void appointment cannot give rise to security of tenure on the part of the holder of such appointment.

The Commission is empowered to take appropriate action on all appointments and other personnel actions, e.g., promotions.[15] Such power includes the authority to recall an appointment initially approved in disregard of applicable provisions of Civil Service law and regulations. Section 20 of Rule VI of the Omnibus Implementing Rules makes this clear:

“Sec. 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds:

- (a) Non-compliance with the procedures/criteria provided in the agency’s Merit Promotion Plan;
- (b) Failure to pass through the agency’s Selection/Promotion Board;
- (c) Violation of the existing collective agreement between management and employees relative to promotion; or
- (d) Violation of other existing civil service law, rules and regulations.” (Underscoring supplied).

The recall or withdrawal by the Commission of the approval which had been issued by one of its Field Officers, Director Escobia, was accordingly lawful and appropriate, the promotional appointment of petitioner Victoria being void “from the beginning.” The approval issued by Director Escobia did not, as it could not, cure the intrinsic vice of that appointment.

We conclude, in respect of the second issue, that petitioners have not shown any grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of respondent Commission.

Petitioners have also complained that the letter of Congressman Carmona which had precipitated action on the part of respondent Commission, was not a verified letter. They contend that the Commission could not or should not have acted upon the charges raised in that letter.

We are not aware of any law or regulation requiring the letter written by the Congressman to be subscribed under oath before the Commission could act thereon. Under its own rules and regulations, the Commission may review *motu proprio* personnel actions involving the position of a Division Chief or above, such as the position of General Services Officer.[16] We hold that the respondent Commission had authority, indeed the duty, to recall on its own initiative the erroneous initial approval of the promotional appointment extended to petitioner Victoria, and to review the same *de novo*.

WHEREFORE, for all the foregoing, the Petition for Certiorari must be DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Bidin, J., on leave.

[1] An office created by the Local Government Code of 1991; Sections 454 and 490, R.A. No. 7160.

[2] Annex “C,” Rollo, p. 29.

[3] Annex “J,” Rollo, p. 36.

[4] In this Resolution, the Commission had also instructed Director Caberoy “to formally charge Mayor Rogelio R. Debulgado for violation of the law on nepotism, conduct the formal investigation, if necessary, and submit [his] report and recommendation to the Commission immediately.” It appears that the criminal complaint against petitioner Mayor was later withdrawn in Resolution No. 93-3320 of the Commission; Annex “A,” Petitioners’ Reply, Rollo, pp. 119-120.

[5] Annex “D,” Rollo, p. 30.

[6] Annex “F,” Rollo, p. 32.

[7] Annex “H,” Rollo, p. 34.

[8] The minimum qualifications of a General Services Officer are prescribed in Section 490 of the Local Government Code of 1991:

“Sec. 490. Qualifications, Powers and Duties. -- (a) No person shall be appointed general services officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree on public administration, business administration and management from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in general services, including management of supply, property, solid waste disposal, and general sanitation for at least five (5) years in the case of the provincial or city general services officer, and three (3) years in the case of the municipal general services officer.

The appointment for a general services officer shall be mandatory for the provincial and city governments.

x x x x x x x x”

(Underscoring supplied)

[9] On 10 September 1993, the Commission issued its Memorandum Circular No. 38, Series of 1993, entitled “Omnibus Guidelines on Appointments and other Personnel Actions” published in the Manila Standard, 6 October 1993; text in “Omnibus Rules Implementing Book V of E.O. No. 292 and other Pertinent Civil Service Laws (published by the Commission). Part VII of Memorandum Circular No. 38 reads in relevant part as follows:

“VII. PROHIBITIONS ON APPOINTMENTS

x x x x x x x x

2. No appointment in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned or controlled corporations shall be made in favor of a relative of the

appointing or recommending authority, or of the chief of the bureau or office or of the persons exercising immediate supervision over the appointee. [Nepotism]

x x x x x x x x

c. The following are exempted from the operation of the rules on nepotism:

- persons employed in a confidential capacity
- teachers
- physicians
- members of the Armed Forces of the Philippines

d. the nepotism rule covers all kinds of appointments be they original, promotional, transfer or reemployment regardless of status.

x x x x x x x x”

(Underscored supplied)

We note that paragraph 2 (d), above underscored, was added by the Commission after the controversy here involved had begun and after the promotional appointment to General Services Officer had been issued to petitioner Victoria. The Court will not, of course, rely upon this paragraph in resolving the first issue here presented. Moreover, it is necessary to settle the question of whether Part VII, 2(d) of Memorandum Circular No. 38, Series of 1993 is itself valid or whether it has expanded the scope of the statutory norm in Section 59, something which an implementing regulation obviously cannot do.

Paragraph 2(d) of Memorandum Circular No. 38 is quoted above basically to point out that it sets out the understanding of the Commission of the scope and reach of Section 59, Book V of E.O. No. 292 and that that understanding has been cast in a form of a general regulation applicable to subsequent appointments and not limited to the particular appointment of petitioner Victoria Debulgado.

[10] See Section 30, R.A. No. 2260, as amended effective 19 June 1959 known as the Civil Service Law of 1959; and Section 49 of P.D. No. 807 dated 6 October 1975, known as the Civil Service Decree of the Philippines.

[11] 203 SCRA 195 (1991).

[12] Teologo v. Civil Service Commission, 19 SCRA 238 (1990); Meram v. Edralin, 154 SCRA 238 (1987).

[13] 203 SCRA at 208-209.

In *Sulu Islamic Association of Masjid Lambayong v. Malik* (226 SCRA 193 [1993]), respondent Judge appointed his nephew (son of his older sister) to the position of janitor in his court, and later promoted him first as MTC Aide and later as Process Server. The Court held that he had violated the prohibition against nepotism found in Section 59, book VI of E.O. no. 292 for which offense, among others, respondent was dismissed from the service. The Court did not seek to distinguish between the original appointment of respondent Judge's nephew as janitor from his subsequent promotional appointments.

[14] It also follows that subparagraph 2(d) of Part VII, Memorandum Circular No. 38, Series of 1993 (quoted in footnote 8, *supra*) does not unduly expand the scope of the statutory norm but, to the contrary, merely faithfully reflects the scope and reach thereof. Subparagraph 2(d) must hence be held valid and effective.

[15] Section 12(14), Chapter 3, Book V of E.O. No. 292.

[16] See Memorandum Circular No. 41, Series of 1991, dated 12 November 1991.

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