

DOLORES A. PAREDES, PETITIONER, VS. CIVIL SERVICE COMMISSION AND REMEDIOS A. AMOR, RESPONDENTS. DOLORES A. PAREDES, PETITIONER, VS. CIVIL SERVICE COMMISSION, MERIT SYSTEMS PROTE...

G.R. No. 88177. December 04, 1990

Ponente: PARAS, J.

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PARAS, J.:

Submitted for decision are the separate petitions for certiorari questioning the following resolutions[1] of the public respondent Civil Service Commission, viz:

In G.R. No. 88177, petitioner Dolores Paredes assails resolution No. 89-072 dated February 6, 1989, sustaining the decision of the Merit Systems Protection Board (MSPB) directing the revocation of her appointment as HS Project Coordinator in the Housing and Land Use Regulatory Board and declaring the said position vacant.

In G.R. No. 89530, petitioner Paredes assails resolution No. 89-276 dated April 27, 1989, affirming the decision of the Merit Systems Protection Board dated April 22, 1988, dismissing all charges against Atty. Remedios A. Amor except habitual tardiness for which the latter was reprimanded and warned that a repetition of the same in the future would be dealt with more severely.

The antecedent facts of the case are as follows:

Petitioner Paredes entered the government service in July 1950 as a public school teacher. Later she transferred to the General Auditing Office as Auditing Clerk detailed at the Philippine Tobacco Administration. On November 16, 1977, she joined the then Human Settlements Regulatory Commission[2] (HSRC for brevity) as Project Officer II. She was promoted to H.S. Project Officer III on July 1980 then to H.S. Project Officer II on December 1, 1981. On October 1, 1985 she was extended a promotional appointment as H.S. Project Supervisor.

On December 30, 1985, private respondent Atty. Remedios A. Amor, H.S. Project Officer IV, contested the promotional appointment of petitioner Paredes as H.S. Project Supervisor, on the ground that she is the qualified next-in-rank pursuant to Section 9 (16) and (20) of P.D. 807 and the Qualification Standards of the HSRC. The case was docketed as HSRC Protest Case No. 86-01.

On January 14, 1986, HSRC Commissioner and Chief Executive Officer Ernesto C. Mendiola, rendered a decision dismissing private respondent Amor's protest as it was filed five days beyond the fifteen (15) day reglementary period provided under Section 10 of Rule IV of the Civil Service Rules and Regulations. Commissioner Mendiola stated that (1) the contested appointment dated October 1, 1985 was issued and posted on the Commission's Bulletin Board on November 13, 1985, but private respondent Amor filed her protest only on December 3, 1985; (2) private respondent Amor is not among the top six next-in-rank candidates recommended by the Selection and Promotion Board; and (3) pursuant to Resolution 85-132 dated April 11, 1985 of the Civil Service Commission petitioner Paredes can be extended a promotional appointment as H.S. Project

Supervisor because although she is only a holder of a two year Elementary Teachers Certificate her educational deficiency can be substituted with her 31 years of service in the government the greater part of which has been in the supervisory level (Rollo, p. 163).

On January 21, 1986, private respondent appealed the decision of Commissioner Mendiola to the Office of the President. In the First Indorsement dated August 12, 1986, the Office of the President requested public respondent to comment on the appeal pursuant to Section 19(6) of P.D. 807. On September 9, 1987, the MSPB requested the Office of the President to forward the record of the case to the former pursuant to the provisions of Executive Order 135 dated February 27, 1987, which repealed Memorandum Circular dated June 4, 1985 of the Office of the President.

On September 21, 1987, by way of comment on the appeal, Commissioner Mendiola in his Second Indorsement reiterated his decision dated January 14, 1986. He also opined that the appeal may be considered moot and academic because petitioner was promoted to the position of HS Program Coordinator effective August 17, 1987 (Rollo, pp. 62-63, Annex G, Petition G.R. No. 88177).

In her letter dated October 26, 1987, private respondent Amor again protested the promotional appointment of petitioner Paredes as HS Program Coordinator arguing that the latter is not qualified for the said position.

On January 4, 1988, the MSPB rendered its decision, the dispositive portion of which provides, viz:

"WHEREFORE, the instant appeal is found meritorious. The decision appealed from is hereby reversed. Protestee-appellee Dolores A. Paredes is found not at all qualified for the contested position of HS Project Supervisor as well as of the higher position of HS Program Coordinator which she presently occupies. Accordingly, the CSC approval on said appointments are hereby revoked and the subject appointment is consequently considered ineffective. She should be reverted to her former position of HS Project Officer IV, the validity of which does not have to be decided here. Protestant-appellant Remedios A. Amor is found to be the competent and qualified next-in-rank not only to the Project Supervisor position which she has originally protested but also to the higher and more responsible position of HS Program Coordinator which she recently protested. It is hereby directed that Atty. Amor be appointed to the position of HS Program Coordinator in the Housing and Land Use Regulatory Board (HLURB), immediately.

"Let a copy hereof be furnished the Chief Executive Officer, HLURB, the contending parties, the Commission on Audit (COA), and the CSC Field Office, Malacanang, Manila, for their information." (Rollo, pp. 65-66)

In arriving at the above stated decision, the MSPB opined that the contested position specifically requires a lawyer, architect, engineer or a holder of a masteral degree for appointment thereto; that petitioner's length of service in the government cannot be used to make up for her educational deficiency; that even if the two year educational requirement can be substituted, petitioner is only a holder of a two year elementary teachers certificate so that she is still one year short of the minimum educational requirement of the contested position as provided in the HSRC Qualification Standards contained in its Merit Promotion Plan and System of Ranking positions approved by the Commission in its Resolution No. 84-215 dated June 28, 1984; that although the appointing authority has a wide latitude of discretion the same is not absolute; that in the exercise of discretion the appointing authority should be guided by the Civil Service Law and Rules.

In her motion for reconsideration dated January 21, 1988, petitioner alleged inter alia, that the HSRC has no approved Qualification Standards; that the CSC Resolution No. 84-215 dated June 28, 1984 approved only the HSRC's Merit Promotion Plan and the System of Ranking Position; that the Qualification Standards is separate from the Merit Promotion Plan and the System of Ranking Position; that the promotional appointments of petitioner are legal.

On April 25, 1988, the MSPB denied for lack of merit petitioner's motion for reconsideration. It noted that the Personnel Officer III of HSRC forwarded to the Office of the President a duly certified copy of the HSRC Qualification Standards (Rollo, pp. 80-83, G.R. 88177).

On appeal the Civil Service Commission ruled that although the HLURB Qualification Standards has not been approved it can be used as a basis for recruitment and promotion in order not to jeopardize the operations of the Office. Accordingly, it issued Resolution No. 89-072 dated February 1, 1989, the dispositive portion of which reads, viz:

"WHEREFORE, in the light of the foregoing premises, the Commission resolved to set aside, as it hereby sets aside the MSPB decision No. 1529 directing the revocation of the appointment of Mrs. Dolores A. Paredes as H.S. Project Coordinator and the appointment of Atty. Remedios A. Amor to the position of H.S. Program Coordinator. Accordingly, the position of H.S. Program Coordinator in the Housing and Land Use Regulatory Board, is declared vacant. It must be filled in by a qualified applicant subject to the discretion of the proper appointing authority and the requirements of the Civil Service Law and Rules." (Rollo, p. 3)

On April 1, 1989, the Civil Service Commission issued Resolution No. 89-265 denying for lack of merit petitioner's motion for reconsideration (Rollo, pp. 161-162, G.R. No. 88177). Hence, the instant petition for certiorari which was docketed as G.R. No. 88177.

Meanwhile, on May 7, 1986, petitioner Paredes filed a sworn complaint against private respondent Amor for falsification of official documents, dishonesty, violation of Civil Service Law and reasonable office Rules and Regulations, habitual tardiness, conduct prejudicial to the best interest of the service and for being notoriously undesirable. In her complaint she alleged, among others, that as Head of the Administrative Services Department of the HSRC it is her duty to monitor observance of Civil Service rules and regulations among the employees of HSRC; that on October 17, 1979 private respondent Amor falsely stated in her application for the issuance of Passport No. A-161889 that she had no occupation when at that she was already employed with the HSRC; that on February 27, 1984, she again misrepresented and/or falsely stated in her application for the issuance of Passport No. A?0640312 that she had no occupation when she was and still is an employee of HSRC; that on July 31, 1984 private respondent Amor secured a medical certificate issued by a government physician that she is suffering from acute pneumonitis requiring complete rest for at least two months; that the medical certificate contained false information as she was not ill, the fact that she reported to work from July 31, 1984 to August 3, 1984 and she travelled to the United States from August 8, 1984 to September 30, 1984; that using the medical certificate she filed on August 3, 1984 an application for sick leave of absence for two months enabling her to collect her salary for the said period; that private respondent Amor in a pleading she filed with the HSRC attached a certificate of authority to travel to the United States purportedly issued on August 3, 1984 by the then Deputy Presidential Executive Assistant Joaquin Venus, Jr.; that said authority to travel is false because there is no record on file in the Office of the President aside from the fact that she could not have filed an application for such authority to travel as an employee of the government because in her passport application she had no occupation; that an examination of her daily time record will show that she was habitually tardy in reporting to work; that despite her employment as Med-Arbiter in the Ministry of Labor and later as Project Officer II in the HSRC she appeared as counsel de oficio before Branch XXX, RTC, Pasay City, without proper authority, in violation of Civil Service Rules and Regulations. Accordingly, petitioner prayed for an investigation and thereafter the dismissal from the service of private respondent Amor.

In her answer dated June 18, 1986, private respondent Amor denied the charges and countered that the same is only a retaliatory measure intended to harass and intimidate her as she protested the promotional appointment of petitioner Paredes. She also pointed out that her passport application which is the basis of the complaint is filed by

her in her personal capacity and not in any way related to the performance of her official functions. On the medical certificate and the Malacanang clearance she argued that they were issued by public officials so said documents carry with them the presumption that they were regularly issued. (Rollo, p. 71, G.R. No. 89530).

Finding the existence of a prima facie case against private respondent Amor, Jezarene C. Aquino, Legal Officer, HSRC, recommended that to resolve all doubts of partiality the case be forwarded to the Civil Service Commission for trial on the merits. Pursuant to CSC Memorandum Circular No. 6, Series of 1978, implementing PD No. 1409, then Commissioner Mendiola requested in his letter dated June 25, 1986 that the said administrative case be taken cognizance of by the Merit System Protection Board.

After hearing and the submission of the parties' memoranda, the MSPB rendered its decisions dated April 22, 1988, absolving private respondent Amor of all charges except for habitual tardiness. Considering that habitual tardiness is a light offense and the evidence on record does not show that she was previously warned, private respondent Amor was only reprimanded and warned that a repetition would be dealt with more severely (Rollo, pp. 54-59, G.R. No. 89530).

In absolving private respondent Amor of the administrative charge of falsification of official document, the MSPB opined that no credible evidence was presented and formally offered to prove the charges. It noted that the person who issued the certification containing the entry in private respondent Amor's passport application that she has no occupation was not presented in the hearing; that the entry on occupation was merely typewritten and the other entries are all printed; that the PR verification slip presented as evidence did not contain information indicating the source thereof and the signature of person issuing it. As to the medical certificate, it noted that the issuing physician was not presented as a witness. Thus, it ruled that the doctor's findings that private respondent Amor is suffering from acute pneumonitis requiring her to rest for at least two months cannot be regarded as false just because she reported to work from August 1 to 3, 1984. As regards the certificate of authority to travel the MSPB found nothing irregular, apart from the fact that Deputy Presidential Executive Assistant Venus was not presented to deny the genuineness of his signature.

Not satisfied with the decision of the MSPB, petitioner Paredes interposed an appeal to the Civil Service Commission. In its Resolution No. 89-276 dated April 27, 1989, the Civil Service Commission dismissed the appeal on the ground that petitioner Paredes is not the party adversely affected by the decision. Citing Section 39(a) of Presidential Decree No. 807, it ruled that the parties who can appeal in an administrative case are the government and the respondent. In its Resolution No. 89-534 dated July 28, 1989, denying petitioner Paredes' motion for reconsideration, the Civil Service Commission stressed that the party adversely affected under Section 30(a) of P.D. 807 had been consistently interpreted to refer to the respondent against whom an adverse decision had been rendered or the Department or Agency concerned and not the complainant. The complainant after the filing of the complaint is relegated to the status of a complaining witness as the offense is committed against the government (Rollo, pp. 45-53, G.R. 89530). Hence, the instant petition for certiorari which was docketed as G.R. No. 89530.

In its En Banc Resolution dated September 28, 1989, this Court resolved (1) to consolidate the above-entitled cases (2) to give due course to the petitions (3) to consider the comment as answer and (4) to require the parties to file their memoranda within twenty days from notice (Rollo, p. 76). In compliance therewith, all the parties filed their respective memoranda.

Cited as grounds for the allowance of the petition in G.R. No. 88177 are the following:

I

A QUALIFICATION STANDARDS NOT BROUGHT INTO EXISTENCE IN ACCORDANCE WITH LAW AS ITS WORDS EXPLICITLY STATE CANNOT BE THE BASIS FOR ANNULING THE PROMOTIONAL APPOINTMENTS EXTENDED TO THE PETITIONER.

II

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AS TO AMOUNT TO LACK OF JURISDICTION IN HOLDING THAT THE APPOINTING AUTHORITY, IN EXERCISING THE WIDE LATITUDE OF DISCRETION ACCORDED TO IT IN APPOINTMENTS, IS BOUND BY A QUALIFICATIONS STANDARD WHICH HAS NOT BEEN BROUGHT INTO EXISTENCE IN ACCORDANCE WITH LAW.

III

THE PETITIONER IS WELL-QUALIFIED FOR THE PROMOTIONAL APPOINTMENTS AWARDED TO HER CONSIDERING HER LONG YEARS OF PUBLIC SERVICE AND QUALIFICATIONS AS A PUBLIC SERVANT.

Likewise, in G.R. No. 89530 petitioner Paredes cited the following grounds for the allowance of her petition, viz:

I

THE EVIDENCE PRESENTED IN THE HEARINGS OUGHT TO HAVE OVERWHELMINGLY ESTABLISHED THE GUILT OF THE PRIVATE RESPONDENT FOR THE OFFENSES IMPUTED TO HER.

II

THE RESPONDENT BOARD RENDERED AN ADMINISTRATIVE DETERMINATION WHICH IS CONTRARY TO THE TENETS OF DUE PROCESS OF LAW.

III

THE PETITIONER IS NOT PRECLUDED FROM DISPUTING THE TOTALLY BASELESS, UNLAWFUL AND PREJUDICED DECISION RENDERED BY THE RESPONDENT BOARD.

IV

THE RESPONDENT BOARD AS WELL AS THE RESPONDENT COMMISSION HAD COMMITTED GRAVE ABUSE OF DISCRETION AS TO AMOUNT TO LACK OF JURISDICTION THEREBY WARRANTING THE ISSUANCE OF A WRIT OF CERTIORARI.

The primary issue for resolution in G.R. No. 88177 is whether or not the public respondent committed a grave abuse of discretion when it sustained the revocation of petitioner Paredes' appointment as HS Project Coordinator and in declaring the said position vacant.

For an act of a court or tribunal to be considered as committed in grave abuse of discretion the same must be performed in a capricious and whimsical manner as tantamount to lack of jurisdiction. The abuse of discretion must be so patent and gross as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law or to act in contemplation and within the bounds of law (Carson et al. v. Judge Pantamosos, Jr.,

G.R. No. 75934, December 13, 1989; Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, G.R. 72424, February 13, 1989; People v. Manuel 11 SCRA 618). Failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition (Del Rosario v. Subido, 31 SCRA 382).

It is not disputed that the Qualification Standards which the HSRC formulated sometime in February 1984 was submitted to the public respondent and returned to the HLURB in June 1984 together with the approved Merit Promotion Plan (Private Respondent's Comment, Rollo, p. 161, G.R. No. 88177). The absence of the approved Qualification Standards was attested to no less by Director Antonio M. Hocan, Office of Career System and Standards, Civil Service Commission, in his letter dated January 13, 1988 addressed to Commissioner Ernesto Mendiola (Rollo, pp. 165, G.R. No. 88177).

Section 20 of Article III on Personnel Policies and Standards under Presidential Decree No. 807 dated October 6, 1975, expressly mandates that:

"SEC. 20. Qualification Standards. ? (1) A qualification standard expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position.

"Qualification standards shall be used as basis for civil service examinations for positions in the career service, as guides in appointment and other personnel actions, in the adjudication of protested appointments, in determining training needs, and as aid in the inspection and audit for the agencies personnel work programs.

"It shall be administered in such manner as to continually provide incentives to officers and employees towards professional growth and foster the career system in the government service.

"(2) The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency, with the assistance and approval of the Civil Service Commission and the consultation with the Wage and Position Classification Office."

Based on the above provisions of law a Qualification Standard prescribes for the minimum qualification requirement in terms of education, Civil Service eligibility, training, experience, physical fitness and other qualities for appointment to a particular position as determined by the appointing authority. A Qualification Standard is to be established or formulated by the department or agency concerned but must be approved by the Civil Service Commission. Approval is required by law because the Civil Service Commission is the central personnel agency of the government entrusted with the enforcement of laws relative to the selection, promotion and discipline of civil servants. Once approved, the Qualification Standards shall be used as guides in appointment and in the adjudication of contested appointments.

In the case at bar, it may be conceded that in the exercise of its quasi-judicial functions, the public respondent Civil Service Commission committed an error in applying the Qualification Standards which it admitted it has not approved. Exigency of the service does not justify the use of a Qualification Standard it has not approved. However, the error is not so grave as would warrant the nullification of its resolution declaring the position of H.S. Project Coordinator vacant. The absence of a Qualification Standard does not justify the appointment of petitioner Paredes or anybody for that matter to the contested position. Without a duly approved Qualification Standard it would be extremely difficult if not impossible for the appointing authority to determine the qualification and fitness of the applicant for the particular position. Without an approved Qualification Standard the appointing authority would have no basis or guide in extending a promotional or original appointment in filling up vacant positions in its department or agency. Public interest therefore requires that a Qualification

Standard must exist to guide the appointing authority not only in extending an appointment but also in settling contested appointments.

Here the appointing authority erroneously assumed that the Qualification Standard it had formulated in February, 1984, had been approved when it was returned in June, 1984, by public respondent together with the approved Merit Promotion Plan. The unapproved Qualification Standard was apparently used by Commissioner Mendiola in appointing petitioner Paredes as its Project Supervisor effective October 1, 1985, because in dismissing private respondent Amor's protest he ruled, among others, that although petitioner Paredes is only a holder of a two year Elementary Teacher's Certificate, her educational deficiency can be substituted with her 31 years service in the government. His erroneous belief of the existence of an approved Qualification Standard may have prompted him to complicate matters by promoting petitioner Paredes to the position of HS Program Coordinator effective August 17, 1987 which was likewise protested by private respondent Amor. Even the Personnel Officer III of the HSRC entertained said belief as it forwarded to the Office of the President a certified true copy of the so-called HSRC Qualification Standards.

In declaring the Position of HS Project Coordinator vacant, the public respondent has therefore not abused its discretion as the Qualification Standards of the HSRC which should be the basis and guide for appointment has not been approved by the Civil Service Commission.

As regards G.R. No. 89530, the crucial issue to be resolved is whether or not petitioner Paredes has the legal personality to appeal the decision of the MSPB absolving private respondent Amor of all charges except for habitual tardiness for which the latter was reprimanded.

Appeal in judicial proceedings is a statutory right that must be exercised only in the manner and in accordance with the provisions of law (*Ozaeta v. Court of Appeals*, G.R. 83281, December 4, 1989; *Velasco v. Court of Appeals*, 51 SCRA 439). This doctrine is also applicable in quasi-judicial proceedings so that one must first ascertain the law applicable to determine whether or not the party can appeal the order or decision.

Section 37 of Presidential Decree No. 807 provides, viz:

"SEC. 37. - (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

"(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head.

"(c) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department, within the period specified in Paragraph (d) of the following Section.

"(d) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or

removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal."

Section 39 thereof also provides, viz:

"Sec. 39. - (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment if any. The notice of appeal shall specifically state the date of the decision appealed from and the date or receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

"(b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; or (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained."

Based on the above provisions of law, appeal to the Civil Service Commission in an administrative case is extended to the party adversely affected by the decision, that is, the person or the respondent employee who has been meted out the penalty of suspension for more than thirty days; or fine in an amount exceeding thirty days salary demotion in rank or salary or transfer, removal or dismissal from office. The decision of the disciplining authority is even final and not appealable to the Civil Service Commission in cases where the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days salary. Appeal in cases allowed by law must be filed within fifteen days from receipt of the decision.

Here the MSPB after hearing and the submission of memoranda exonerated private respondent Amor of all charges except for habitual tardiness. The penalty was only a reprimand so that even private respondent Amor, the party adversely affected by the decision, cannot even interpose an appeal to the Civil Service Commission.

As correctly ruled by private respondent, petitioner Paredes the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the Civil Service Commission. In an administrative case, the complainant is a mere witness (*Gonzalo v. D. Roda*, 64 SCRA 120). Even if she is the Head of the Administrative Services Department of the HSRC as a complainant she is merely a witness for the government in an administrative case. No private interest is involved in an administrative case as the offense is committed against the government.

In view of the foregoing discussion it would be unnecessary to consider the other issues raised in these petitions.

PREMISES CONSIDERED, the instant petitions are hereby DISMISSED for lack of merit.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Feliciano, J., on leave.

[1] Issued by CSC Chairman Patricia Sto. Tomas and Commissioners Sannilo Badongay & Mario Yango.

[2] Now Housing and Land Use Regulatory Board under E.O. No. 90 dated December 17, 1986.

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