



D/L.7.
March 23, 2026.
MNS.

FMA No. 1120 of 2021
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CAN 2 of 2026

Pardeshi Jeswara
Vs.
The Union of India and others

Mr. Surendra Kumar Sharma

... for the appellant.

Mr. Ashok Kumar Jena

...for the respondents.

Re : CAN 2 of 2026 (modification)

1. The present application has been filed for modification of a judgment dated June 27, 2023, passed in FMA No. 1120 of 2021, which was preferred against an order dated January 25, 2021 passed by a learned Single Judge in WPA No. 4611 of 2018 with CAN 1 of 2020.
2. By the impugned order, the learned Single Judge had directed ossification test to be conducted for the purpose of ascertaining the age of the writ petitioner/appellant.
3. The crux of the dispute was a letter of superannuation issued to the original petitioner/appellant, informing the said writ petitioner that he would retire from the trustee's service with effect from April 30, 2018 on attaining the age of superannuation. The challenge of the writ petition was premised on the petitioner's assertion that he had not attained the age of superannuation on that date



and that his age was not rightly reflected in the records of the Kolkata Port Trust.

4. The Hon'ble Division Bench had directed the learned Single Judge to dispose of the writ petition on the basis of the report of the ossification test, which was held under the aegis of the Superintendent of the SSKM Hospital.

5. Learned counsel for the writ petitioner/appellant submits that despite such specific direction, no report was submitted by the SSKM Hospital authorities on the ossification test of the writ petitioner.

6. Accordingly, it is contended that due to non-availability of such report, the order of the Division Bench remanding the matter to the learned Single Judge for disposal of the writ petition on the basis of the report of the ossification test needs to be modified.

7. Learned counsel also seeks to place reliance on judgments of the Hon'ble Supreme Court for the proposition that ossification test is not necessarily the only mode of proof of age.

8. It is submitted further that in the meantime, the original writ petitioner, whose age was under contention, has met his demise and the present application has been filed by his heirs and legal representatives.

9. Since the original writ petitioner is no longer in the world of living, it is contended that there is no scope of further ossification test being held or the writ petition being decided on such premise.



10. Learned counsel appearing for the Kolkata Port Trust controverts such allegations and submits that due to the demise of the concerned doctor in charge of the initial ossification test, the report of which was never forwarded by him, a re-examination of the original writ petitioner by a different medical board was suggested.

11. However, the writ petitioner refused to accede to such request.

12. It is further contended that the order of the Division Bench was challenged in a Special Leave Petition, which was dismissed by the Hon'ble Supreme Court by observing that the Supreme Court was not inclined to interfere with the impugned judgment passed by this Court.

13. Not stopping there, the writ petitioner had preferred a review application before the Hon'ble Supreme Court, which was also dismissed on merits.

14. Having thus failed, it is submitted that the original writ petitioner continuously thwarted the efforts to have a fresh ossification test, thereby stalling the matter in order to frustrate the remand order passed by this Court.

15. Hence, the heirs of the original writ petitioner cannot now take advantage of the demise of the writ petitioner, who deliberately refused to subject himself to a further ossification test, though offered. Thus, the present modification application cannot be entertained.

16. Upon a careful consideration of the materials on record, we find that the order under modification was



passed upon assigning several reasons, inter alia being that the documents submitted by the original writ petitioner/appellant in the form of Voter Card, PAN Card, Aadhaar Card and Identity Card were post-dated, that is, issued much after March, 1983, on which the age of the petitioner was recorded in his service book.

17. It is on the said premise that, upon assigning substantial reasons, the Division Bench had directed remand of the matter and had observed that the writ petition ought to be disposed of on the basis of the report of the ossification test.

18. From the communication by the Medical Superintendent-cum-Vice Principal, IPGME&R-SSKM Hospital, Kolkata, annexed at page 95 of the present modification application, it is evident that Dr. B. N. Kahali, under whose supervision the initial ossification test was held, had expired on June 12, 2024 without forwarding the report of the said test.

19. In such context, in order to honour the judgment of the Division Bench, the Kolkata Port Trust (KoPT) had submitted a letter along with a copy of the court order, requesting to forward the report of the ossification test.

20. Subsequently, however, due to non availability of the report and the demise of the doctor in charge of the previous ossification test, a Committee formed by the SSKM Hospital opined that re-examination of the original writ petitioner might be done.



21. Thereafter, the CMO, KoPT issued a letter dated February 4, 2021 requesting to intimate the date of Medical Board for the ossification test well ahead to communicate to the original writ petitioner Sri Pardeshi Jeswara (since deceased).

22. Accordingly, the Medical Superintendent-cum-Vice Principal of the SSKM Hospital arranged a Medical Board on February 19, 2021 vide Memo No. SSKM/MSVP/132/2021 dated February 8, 2021 instructing Shri Jeswara to attend before the Medical Board for re-examination on being identified by one authorized person from KoPT.

23. However, in the communication-in-question dated August 25, 2025, it was further recorded that on February 19, 2021, an authorized person remained present before the Medical Board but Shri Jeswara, the original writ petitioner, did not appear before the Board.

24. Accordingly, as per recommendation of the Committee, the Medical Superintendent issued a letter vide Memo Mo. SSKM/MSVP/204/21 dated February 24, 2021 addressed to the CMO, KoPT and a copy thereof was forwarded to Shri Jeswara (since deceased), instructing him to attend before the Medical Board on March 3, 2021.

25. Despite such communication, instead of attending the Board, Shri Jeswara (since deceased) submitted a letter to the office of the Medical Superintendent-cum-Vice



Principal, SSKM Hospital through his Advocate, informing about the pendency of the appeal.

26. An authorized person from KoPT was present on that date but the writ petitioner did not appear before the Medical Board on March 3, 2021.

27. Thus, it is evident that during his lifetime, the original writ petitioner/appellant refused to appear before the Medical Board for holding a fresh ossification test despite being given such opportunity.

28. Now, after having failed before all possible forums to assail the judgment of the Division Bench, first upon the writ petitioner's Special Leave Petition being dismissed and thereafter the connected review application also meeting the same fate, the heirs of the original writ petitioner now seek to reopen the judgment of this Court on merits in the garb of the instant modification application.

29. It is well-settled that the judgment passed in in a disposed-of matter cannot be reopened or modified for the asking, unless it is properly assailed before the superior forum or the tests of review under Order XLVII of the Code of Civil Procedure are met.

30. In the present case, the challenge to the superior forum, that is, Hon'ble Supreme Court has failed twice.

31. Moreover, we do not also find any error apparent on the face of the judgment under modification.

32. That apart, the heirs and legal representatives of the original writ petitioner/appellant cannot take advantage of



the wrong of the writ petitioner in consistently refusing to have an ossification test.

33. We do not find any effort on the part of the original writ petitioner, during his lifetime, to have such an ossification test at all.

34. Hence, the present modification application is neither maintainable in law, nor does it have any merits from any perspective.

35. Accordingly, there is no scope of modifying and/or recalling the judgment dated June 27, 2023 passed in FMA No. 1120 of 2021.

36. Thus, CAN 2 of 2026 is dismissed on contest, without, however, any order as to costs.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)