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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd October, 2019

+ LPA 668/2019 & CM APPLs. 45826/2019, 45827/2019

MUKESH KUMAR SRIVASTAVA Appellant
Through: Mr. Prateek Tushar Mohanty,
Ms. Payal Mohanty and Mr. Tushar
Ranjan Mohanty, Advs.

versus

UNION OF INDIA & ANR Respondents
Through: Mr. Bhagwan Swarup Shukla,
CGSC with Mr. Mukesh Pandey
and Mr. Murari Shukla, Advs. for
R-1

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
23.10.2019

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D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. 45826/2019 (for condonation of delay)

1. This Civil Miscellaneous application has been preferred by the appellant under Section 5 of Limitation Act for condonation of delay of 60 days in preferring the appeal.
2. Having heard learned counsel for both the sides and looking to the reasons stated in this application, there are reasonable grounds for condonation of delay.

3. Accordingly, we hereby condone the delay of 60 days in preferring the appeal by the appellant.
4. The application stands allowed and disposed of accordingly.

LPA 668/2019

1. This Letters Patent Appeal has been preferred by the appellant (original petitioner) whose W.P.(C) 6837/2019 was dismissed by the learned Single Judge *vide* judgment and order dated 16th July, 2019 (Annexure P-1 to the memo of this LPA), whereby the prayer for change of date of birth in passport from 10th April, 1957 to 4th July, 1957 was not allowed by the learned Single Judge, despite the fact that the appellant had taken voluntary retirement from the services of Government of India on 9th June, 2009, and he has already crossed the age of 62 years and despite the fact that the change of date of birth by few months is prayed by the appellant only because of the birth certificate issued by the Municipal Corporation of Lucknow Nagar Nigam.
2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the date of birth mentioned in the passport of the present appellant was “10th April, 1957”, on the basis of his class X school certificate.
3. The appellant was in the service of Indian Statistical Service, Government of India, and took voluntary retirement on 6th June, 2009.
4. Thus, more than a decade has lapsed, since the appellant has ceased to be in the services of the Government of India. Therefore, as stated by the appellant in the memo of the writ petition as well as in this appeal, he is not going to claim any monetary benefit from the Government of India or from other authority by having the date of birth, in his passport, rectified, from 10th April, 1957 to 4th July, 1957.
5. Learned counsel for the appellant, on instructions, makes a

statement at the Bar, before this Court, that no monetary benefit shall be claimed by the appellant on the basis of change of his date of birth in his passport, as prayed by him. However, on the basis of the rectified birth certificate issued by Municipal Corporation of Lucknow Nagar Nigam, to the appellant, prays that the date of birth as entered in his passport be changed as he desires to settle in the USA, as both his sons are permanently settled there.

6. It is pertinent to note that the appellant has retired from the Indian Statistical Service after his voluntary retirement, in June, 2009. The Office Memorandum (F. No. 19017/1/2014-Estt (A-IV) dated 16th January, 2014 issued by the Ministry of Personnel, Public Grievances and Pensions, cannot be said to preclude the appellant from preferring an application for rectification of his date of his birth in his passport for the reason that after his retirement in 2009, the aforesaid office memorandum which applies only to 'a government servant' cannot be extended to a retired government servant. Therefore, the contention that he could seek a rectification of his date of birth within five years of his joining of service does not hold ground.

7. Further, the appellant was issued his birth certificate by the Municipal Corporation of Lucknow Nagar Nigam on the 19th of September, 2018 and has then, preferred an application before the respondents on 18th of December, 2018 for the aforementioned rectification, and thus by no means, has the appellant caused any inordinate or unexplained delay in preferring such an application for rectification.

8. Para 6.1 read with Clause (i) of para 6.10, of 'Chapter III of the Compendium of instructions/guidelines relating to the issue of passports in India/abroad', envisage a correction/rectification of date of birth in a subsequent passport if a bonafide change is preferred by the applicant.

For ready reference, Clause (i) of para 6.10 thereof, is reproduced as under:-

“6.10 As per recent circular no. VI/401/2/5/2001, dated 22.09.2016 issued by the Ministry, the following are the additional guidelines for PIA on judicial pronouncements made after the issue of the OM dated 26.11.2015 and 13.01.2016:

(i) The PIA shall consider the explanation of each applicant seeking change in the DOB to find the genuineness of the claim even though more than five years have elapsed after the issue of the passport.”

9. The appellant herein was issued his birth certificate on 19th September, 2018 only after approaching the concerned authority. It would be incorrect to say that the appellant has acted in a malafide manner, since it was the Municipal Corporation of Lucknow Nagar Nigam that informed the appellant of his correct date of birth and issued the aforesaid birth certificate, after which he had promptly, on 18th December, 2018, preferred an application for rectification of his date of birth in his passport. Thus, the appellant in a bonafide manner sought rectification of his date of birth within three months of his birth certificate having been issued and thus has not caused any unnecessary undue inordinate delay in preferring such an application.

10. Furthermore, the authenticity or validity of the said birth certificate which has been issued by the competent authority, i.e. the Municipal Corporation of Lucknow Nagar Nigam has neither been questioned, nor been challenged in any court, and thus there exists no ground for the respondents, to deny the appellant such a rectification of his date of birth

in his passport.

11. Thus, no prejudice is going to be caused to the respondents, or to anybody for such change in the date of birth. No monetary benefit is also going to be claimed by this appellant (original petitioner) in future.

12. Moreover, the change of date of birth is required and necessitated because of different date of birth recorded in the certificate issued by the Municipal Corporation of Lucknow Nagar Nigam.

13. The above aspects of the matter have not been properly appreciated by the learned Single Judge while deciding the W.P.(C) 6837/2019 on 16th July, 2019.

14. We, therefore, quash and set aside, judgment and order dated 16th July, 2019 in W.P.(C) 6837/2019.

15. We, therefore, hereby direct the passport authority i.e. Respondent No.2, to either issue fresh passport, to this appellant mentioning therein his date of birth as 4th July, 1957, or to make necessary correction in his existing passport by correcting his date of birth as 4th July, 1957.

16. The necessary corrections shall be carried out within a period of four weeks from today, by the respondents, in the passport of this appellant.

17. With the above observations, this letters patent appeal is allowed and disposed of.

CM APPL. 45827/2019 in LPA 668/2019

18. In view of the order passed in LPA 668/2019, this Civil Miscellaneous application stands disposed of.

CHIEF JUSTICE

OCTOBER 23, 2019/dsn

C.HARI SHANKAR, J.