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**(2014) 06 MP CK 0047**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 7674/2012**

Pushpendra Singh Bhadoriya

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision :** 24-06-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2014) 06 MP CK 0047

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** D.P. Singh, Advocate for the Appellant; Pravin Newaskar, Deputy Government Advocate for Respondent/State, Advocate for the Respondent

**Final Decision :** Partly Allowed

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## Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioner has called in question the orders, Annexures P/1 and P/2. A direction is prayed to appoint him on the post of Sub-Inspector, because the petitioner is more meritorious qua respondents No. 6 and 7.

2. Notices were issued to respondents No. 6 and 7 but could not be served. Thus, the petitioner obtained permission from this Court and published the notices in Dainik Bhaskar, Bhopal dated 7.4.2014. Despite said publication, the private respondents herein have not chosen to contest this litigation.

3. Admitted facts between the petitioner and official respondents are that the petitioner submitted his candidature pursuant to the advertisement, Annexure P-3. As per clause 2.1 of the Rules, Annexure P-3, the petitioner was required to show his preference for the purpose of appointment. By placing reliance on Annexure P/8 with rejoinder, it is demonstrated that the petitioner gave his first option for the post of Sub-Inspector (District Police Force). This is admitted between the parties that the petitioner has secured 222 marks in the selection whereas the private respondents herein have secured 213 and 216 marks

respectively. The petitioner was offered the post of Platoon Commander whereas the private respondents herein were appointed on the post of Sub-Inspector (District Police Force). This is also admitted between the parties that petitioner's name is in the main merit list whereas names of private respondents are in the waiting list.

4. Shri D.P. Singh, learned counsel for the petitioner by placing reliance on clause 2.1 of the Rules submits that the petitioner has a preferential legal right to get the post of Sub-Inspector (District Police Force) in view of his better merit position. Reliance is placed on a judgment of this Court, passed in WP No. 4824/2012 (Santosh Yadav vs. State of MP and others).

5. Shri Pravin Newaskar, learned Deputy Govt. Advocate for the other side relied on certain paragraphs of the return and opposed the petition. In the return, it is urged that the appointment of the private respondents from waiting list is justified. Reliance is placed on Rule 13-A of the notification dated 4.3.2011.

6. I have heard learned counsel for the parties and perused the record.

7. Clause 2.1 of the Rules reads as under:-

Rule 13-A, on which reliance is placed by the respondents reads as under:-

13A. Waiting List.- A waiting list comprising names of candidates numbering 10% of the advertised vacant posts shall be prepared in the order of merit. This waiting list shall remain valid for 3 months from the date of commencement of basic training. If any selected candidate from final select list does not join in stipulated time, then candidates in waiting list will be offered appointment in the order of merit".

8. This Court in Santosh Yadav (supra) considered the effect of Rules 2.1 and 13-A aforesaid and opined as under:-

7. In the considered opinion of this Court, clause 2.1 makes it crystal clear that option/preferences are given to the candidates. This means that candidate can decide as to which post he will occupy as preference No. 1 followed by other posts as preference No. 2, 3 and 4 etc. Admittedly, petitioner has opted for Sub-Inspector (District Executive Force). This argument cannot be accepted that petitioner cannot claim a post on preference basis. Clause 2.1 itself provides that such claim can be given only according to the merit of the candidates. The underlined portion of the Rule 13A quoted above makes it clear that wait list is to be made in the order of merit. The appointment orders are also required to be issued in the order of merit.

9. In view of aforesaid finding of this Court, the point involved in this case is no more res integra. In view of the finding in Santosh Yadav (supra) it is clear that the petitioner has a preferential right to occupy the post of Sub-Inspector (District Police Force). The post is required to be given in the order of merit to the petitioner. Thus, following the ratio of Santosh Yadav, I am unable to approve

the action of the respondents in depriving the petitioner to occupy the post of Sub Inspector which was a post under first preference. Thus, the action of the respondents to this extent is disapproved. The respondents are directed to appoint the petitioner on the post of Sub-Inspector (District Police Force) from the date of appointment as Platoon Commander with all consequential benefits. If for the purpose of appointment of the petitioner on the said post, the private respondents are required to be dislodged, the said action may be taken to ensure that the petitioner is appointed on the post of Sub-Inspector (District Police Force) from the date ordered above. The aforesaid exercise be completed within 45 days.

10. Petition is allowed to the extent indicated above. No costs.