

(2011) 02 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 526 of 2011

Mamta A Ghodasara and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Range Forest Officers Competitive Examination Rules, 2008 — Rule 10, 13, 3, 4
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31
Recruitment Rules, 2007 — Rule 4, 5, 6
University Grants Commission Act, 1956 — Section 3

Citation : (2011) 02 GUJ CK 0070

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; Pranav Trivedi, Asstt. Government Pleader for Respondents 1 and 2 and D.G. Shukla, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. Pranav Trivedi, learned Assistant Government Pleader, waives service of notice of Rule on behalf of Respondents Nos. 1 and 2. Mr. D.G. Shukla, learned advocate, waives service of notice of Rule on behalf of Respondent No. 3. On the facts and in the circumstances of the case, and with the consent of the learned advocates for the respective parties, the petition has been heard and finally decided.

2. The Petitioners have preferred this petition under Article 226 of the Constitution of India, inter alia, with a prayer to direct the Respondents to allow them to appear in the Main Examination of the Combined Competitive Examination for the posts of Assistant Conservator of Forests, Class-II and Range Forest Officer, Class-II, to be held by the Respondents, pursuant to Advertisement No. 209/09-10, dated 01.03.2010. Further, the Petitioners have challenged the impugned decision of the Respondent-Gujarat Public Service

Commission and the State Government to the effect that as per the Recruitment Rules, candidates possessing the qualification of B. Sc. (Microbiology) are not eligible for selection and appointment to the posts of Assistant Conservator of Forests and Range Forest Officer.

3. Briefly stated, the case of the Petitioners is that they have qualified the Bachelor of Science Examination (B. Sc.) with Microbiology as the special or principal subject, and have also studied the subjects of Chemistry, Physics, Botany, Zoology, during their Graduation, making them eligible and qualified to be selected and appointed as Assistant Conservator of Forests, Class-II, and Range Forest Officer, Class-II ("ACF" and RFO" for short) in the Forest and Environment Department of the State. Respondent No. 3 - Gujarat Public Service Commission ("GPSC" for short) issued advertisement No. 209/09-10 dated 01.03.2010, inviting applications for the posts of Assistant Conservator of Forests, Class-II and Range Forest Officer, Class-II. Forty seven vacant posts were advertised in the cadre of ACF and 120 in that of RFO. The total number of vacancies advertised are, thus, 167. According to the Petitioners, they are eligible and qualified for the said posts and have applied in response to the said advertisement. The GPSC issued letters dated 05.05.2010 to the Petitioners, permitting them to appear in the Preliminary Examination held on 30.05.2010. The result of the Preliminary Examination was declared on 07.08.2010, and the Petitioners have been included in the list of 2842 successful candidates. Having been declared successful in the Preliminary Examination, the Petitioners were to appear in the Main Examination. It is the case of the Petitioners that after the result of the Preliminary Examination was declared, they orally learnt from the Respondents that candidates possessing the degree of B. Sc. with Microbiology as a special/ principal subject were not going to be considered as being eligible for the Main Examination. The Petitioner No. 1, therefore, asked for specific information in this regard, under the Right to Information Act, 2005, by letter date 21.10.2010. Vide communication dated 19.11.2010, the GPSC has replied that B. Sc. Microbiology has not been included in the subjects of Bachelor of Science in the Recruitment Rules, and the State Government has not issued any Notification treating B. Sc. (Microbiology) as an equivalent qualification. In the meantime, Petitioner No. 1 had addressed a detailed representation dated 23.10.2010 to the Hon"ble Chief Minister in this regard, with a copy to the Principal Chief Conservator of Forests (Respondent No. 2), being the head of the Respondent-Department. After receipt thereof, Respondent No. 2 addressed letter dated 10.11.2010 to the State Government, wherein it has been stated that all Graduates in Science with any special / principal subject should be permitted to appear in the Main Examination. It is further stated that the decision whether the subject of Microbiology should be considered as equivalent to the subjects stated in the Recruitment Rules, is to be taken by the State Government. Respondent No. 2 has, however, expressed his opinion that the Petitioners should be permitted to appear in the Main Examination. The grievance of the Petitioners is that though they have graduated in the Science stream and

have studied the subjects of Chemistry, Physics, Botany, and Zoology during their Graduation, with Microbiology as their special/ principal subject, and in spite of an explicit representation having been made in this regard, the State Government has not issued any clarification, Notification or instructions, treating Microbiology as an equivalent subject to the other subjects mentioned in the Recruitment Rules. According to the Petitioners, they are likely to suffer serious prejudice as the GPSC shall proceed to hold the Main Examinations in which the Petitioners would not be permitted to participate, therefore, they have approached this Court by preferring the present petition.

4. An affidavit-in-reply has been filed by Shri T.A. Saiyed, Under Secretary to the Government of Gujarat, Forests and Environment Department, on behalf of the State Government, affirmed on 02.02.2011. The sum and substance of the averments contained in the said affidavit is that the Recruitment Rules for the post of ACF and RFO, as amended, have been framed under Article 309 of the Constitution of India, and have been notified vide several Government Notifications. According to the said Recruitment Rules, a candidate must possess a Bachelor's Degree from a recognized University, as stated therein, with one of the subjects mentioned in the said Rules. That the Petitioners hold the degree of B. Sc. (Microbiology), which subject is not mentioned in the Rules governing the said posts, therefore, the Petitioners are not entitled to appear in the Main Examination. The stand of the State Government is further elaborated by stating that the subjects mentioned in the Rules should be considered only with regard to the marksheet of the final year of Graduation. As the Petitioners have studied the subjects mentioned in the Rules in the First and Second Years of Graduation, they do not meet the requirement of the Rules as the said subject do not find mention in the marksheets of the Petitioners for the final year of Graduation.

5. A similar stand is taken in the affidavit-in-reply filed on behalf of GPSC by Shri Vinay Navnitlal Desai, Joint Secretary, GPSC, affirmed on 03.02.2011. The stand of the said Respondent is that the Petitioners do not possess the prescribed educational qualifications for recruitment to the posts of ACF and RFO, as specified in the Recruitment Rules and the advertisement. As regards equivalence of the subject of Microbiology with the subjects mentioned in the Rules, it is stated that no Notification has been issued by the State Government regarding the same.

6. In the above noted factual background, the learned Counsel for the respective parties have made lengthy and detailed submissions.

7. Mr. K.B. Pujara, learned advocate for the Petitioners, has advanced the following submissions:

(A) As per the Assistant Conservator of Forests/ Range Forest Officers' Competitive Examination Rules, 2008, more specifically Rule 3 thereof, a candidate should hold a Bachelor's Degree of any recognized University with one of the subjects, including Botany, Chemistry, Physics and Zoology, among others.

Similarly, for appointment to the post of ACF by direct selection, the candidate should possess a Bachelor's degree of any University as mentioned in Rule 4(b) of the Assistant Conservator of Forests in the Gujarat Forests Service, Class-II Recruitment Rules, 2007, with one of the subjects mentioned therein, including Botany, Chemistry, Physics and Zoology. The Petitioner No. 1 possess the qualification of Bachelor of Science from Saurashtra University and her special subject is Microbiology. However, the marksheets of Petitioner No. 1 show that she has studied the subjects of Mathematics, Chemistry and Physics at the Higher Secondary level and Physics and Chemistry in the First and Second Years of the B. Sc. Course. Similarly, Petitioner No. 2 possesses a B. Sc. Degree from Sardar Patel University and his principal subject is Microbiology. The Petitioner has studied the subjects of Physics, Chemistry, Botany and Zoology, in the First and Second Years of the B. Sc. Course. Petitioner No. 3 has passed the B. Sc. examination from Gujarat University, and his special subject is Microbiology. He has also studied the subjects of Physics and Chemistry in the First and Second Years of the B. Sc. course. From the marksheets of the Petitioners, it is very clear that they have studied more than one of the subjects stipulated in the Recruitment Rules during Higher Secondary and Graduation, therefore, merely because their special or principal subject in the B. Sc. course is Microbiology, it cannot be said that the Petitioners have not passed B. Sc. with the subjects of Physics, Chemistry, Botany, and Zoology, which are specifically mentioned in the Recruitment Rules.

(B) As the Petitioners have studied more than one of the said subjects they cannot be excluded from appearing in the Main Examination for the posts of ACF and RFO. The Respondents are interpreting the Rules in a very narrow manner, resulting in an erroneous interpretation. The Rules nowhere state that the subjects studied by the Petitioners during First and Second Years of the B. Sc. course should also be mentioned in the marksheets of the Final Year. When the Petitioners have studied the very subjects mentioned in the Rules with Microbiology as their main and/ or principal subject, as required by the Rules, they possess a degree of B. Sc. with one of the subjects that form the essential qualification. By putting an erroneous interpretation upon the Rules, the Respondents are wrongfully excluding the Petitioners from participating in the ACF/ RFO Combined Competitive Examination, causing great injustice to them.

(C) Respondent No. 3 - GPSC has published the curriculum of the Combined Competitive Examination for the posts of ACF and RFO. The Petitioners have already selected the required number of optional subjects from the said list in view of the studies undertaken by them at the Higher Secondary and the B. Sc. Degree course. It is not required by the Rules that the candidate must select the same optional subjects for the said recruitment, as would be the subjects at Graduation.

(D) That the subjects prescribed in the Recruitment Rules are diverse, such as Botany, Chemistry, Geology, Mathematics, Physics, Statistics, Zoology, Animal

Husbandry, Veterinary Science, Agriculture, Forestry and Engineering, and most of them have nothing in common with the other. Though a variety of subjects have been prescribed as a qualification for eligibility at the recruitment level, however, if selected for the post of ACF, a candidate is required to be kept on probation for a period of two years. During the probation period the candidate shall be required to undergo a course of Forestry for two years at an institution recognized by the Government and to obtain a Diploma or Degree or Certificate, in Forestry. Similarly, as per the requirement of the Range Forest Officer, Class-II Recruitment Rules, 2008, a candidate appointed by direct selection shall be required to undergo training for a period as prescribed by the Government for the RFO course at the Forest Rangers College. The said candidate shall also be required to be on probation for a period of two years. The Recruitment Rules for both the posts of ACT and RFO, therefore, make it clear that all candidates would have to undergo training and obtain the requisite specialization in Forestry, whatever be the subjects that they have studied at the Graduation level, therefore the decision of the Respondents in declaring the Petitioners to be ineligible, has no rational basis, apart from being based on an incorrect interpretation of the Rules.

(E) That the Petitioner No. 1 has made a detailed representation to the Hon'ble Chief Minister, with a copy addressed to Respondent No. 2, wherein a comparative table has been given, enumerating the subjects studied in the B. Sc. Microbiology Degree course, B. Sc. Botany Degree course, B. Sc. Zoology Degree course, and B. Sc. Mathematics Degree course, in the First, Second and Third Years thereof. From the said table, it is clear that the subjects of Biology, Physics and Chemistry appear in the B. Sc. Microbiology, Botany and Zoology Degree Courses and the subjects of Chemistry and Physics are studied in the B. Sc. Mathematics Degree course; meaning thereby, that the Petitioners have studied the same subjects, that is, Physics, Chemistry and Biology, during the B. Sc. course in which Microbiology is the special subject as are studied in the B. Sc. Degree courses in the subjects of Botany, Zoology and Mathematics. All these subjects find mention in the Recruitment Rules, therefore, the Petitioners possess the requisite educational qualifications.

(F) Respondent No. 2, who is the Head of the Respondent-Department, has opined that candidates possessing the Bachelor of Science degree in any Science subject should be permitted to appear in the Main Examinations. However, the issue of equivalence has been left to be decided by the State Government. The Petitioners have graduated in Science Stream subjects and their special / principal subject is Microbiology. They have studied the subjects of Physics, Chemistry, Botany and Zoology during the B. Sc. degree course and have graduated with the said subjects. Even as per the opinion expressed by Respondent No. 2, they should be permitted to sit for the Main Examinations.

(G) Several high-ranking officers are serving in the Respondent-Department, possessing the same educational qualifications as the Petitioners, that is, a

degree of B. Sc. (Microbiology). The Petitioners have annexed the details of such officers to the petition. However, the reply of the State Government in this regard is vague and it is stated that those officers may have been eligible as per the Recruitment Rules in vogue at the relevant period of time, without clarifying whether the eligibility criteria at the relevant point of time was different, and if no, what is the difference.

(H) Only after filing of the petition on 17.01.2011, has the GPSC published a list of ineligible candidates on their website and placed the same on the Notice Board, on 02.02.2011, wherein names of the Petitioners appear at Sr. Nos. 62, 237 and 513 respectively. Against their names it is stated that they do not possess the requisite educational qualifications. In spite of the representation made by Petitioner No. 1 on 23.10.2010, no decision has been taken by the State Government regarding equivalence of the main subject of the Petitioners (Microbiology) with the subjects mentioned in the Recruitment Rules, though the power to do so is conferred by Rule 4 itself.

(I) The present recruitment is for a total number of 167 posts and is being held after 25 years. If the Petitioners are excluded from appearing in the Main Examination, they will lose all chances of future recruitment. The decision to exclude the Petitioners and the inaction of the State Government in not taking a decision regarding equivalence is highly unjust and arbitrary, and deserves to be struck down.

8. Opposing the prayers made in the petition, Mr. Pranav Trivedi, learned Assistant Government Pleader appearing for the State Government, has submitted that:

(I) As per the Rules, in order to be eligible for the post of ACF/ RFO the candidate should possess a Bachelor's Degree of any recognized University with one of the subjects mentioned in the Rules such as Botany, Chemistry, Biology, Maths, Physics, Statistics, Zoology, or possess a Bachelor's degree in Animal Husbandry, Veterinary Science, Agriculture, Forestry or Engineering, or possess an equivalent qualification recognized as such by the State Government for this purpose. The Petitioners hold a degree in B. Sc. (Microbiology), which subject is not mentioned in the Rules for the said posts, therefore, the Petitioners are not eligible to appear in the main examination

(II) Respondent No. 2 has forwarded the representation of the Petitioners with his views only, which would not make the Petitioners eligible.

(III) The marksheets of the Petitioners for the Final Year of the B. Sc. degree course do not mention any of the subjects stipulated in the Rules. For the purpose of assessing whether the Petitioners possess the requisite educational qualifications, only the marksheet of the Final Year of Graduation are required to be taken into consideration so as to ascertain whether they are eligible to sit in the Main Examination.

(IV) The recruitment is taking place after a very long time and at this stage, if the contention of the Petitioners is to be considered, it would entail amendment of the Rules, which is a very long and time-consuming procedure therefore, it will not be appropriate to modify the recruitment process which is at an advanced stage.

(V) The main subject of the Petitioners, that is Microbiology, does not find mention in the Rules and the word `with" mentioned in Rule 4 means that the Bachelor's of Science Degree has to be with the main subject. Whereas the word `in" appearing in the latter part of the Rule is used for different subjects that are not part of the Science Stream.

During the course of hearing, the learned Assistant Government Pleader, has produced the original record and has stated upon the basis of the same that no decision regarding the subject of Microbiology has been taken by the State Government while framing the Recruitment Rules. Mr. D.G. Shukla, learned advocate for the GPSC has stated, upon instructions, that there are about 62 candidates, including the Petitioners, who have been declared ineligible on the ground that they possess the degree of B. Sc.

(Microbiology).

9. While opposing the petition, Mr. D.G. Shukla, learned advocate for the GPSC, has urged the following contentions:

(i) That Microbiology has not been included in the specific subjects of Bachelor of Science in the Rules and no Notification has been issued by the State Government regarding equivalence of B. Sc. (Microbiology) for the post of ACF/ RFO. The stand of the Petitioners that they have studied the subjects mentioned in the Rules during the course of their B. Sc. degree in the First and Second Years, cannot be accepted and they have rightly been declared as ineligible and excluded from the Main Examination.

(ii) That the advertisement issued by the GPSC clearly mentions that the candidates should possess a degree of Bachelor of Science in one of the subjects mentioned therein, which are the same subjects as provided for by the Rules. The Petitioners were well aware even at the time of issuance of the advertisement regarding the essential qualifications. After receipt of applications, all candidates were permitted to appear in the Preliminary Test. GPSC received 15553 applications and about 8711 candidates appeared in the Preliminary Test. The result was declared on 07.08.2010 and 2848 candidates were declared to have passed the same. The Petitioners have cleared the Preliminary Test. After verification of the applications, GPSC published the list of eligible candidates on 01.02.2011 and the list of ineligible candidates on 02.02.2011. The eligible candidates who have cleared the Preliminary Test will be required to appear in the main examination (written and interview test) which is to be held on 19.02.2011 and as the Petitioners are ineligible, they are not entitled to appear for the said examination.

10. I have heard the learned Counsel for the respective parties and considered the submissions advanced by them. The only issue involved in the petition is, whether the Petitioners possess the requisite educational qualifications for appointment to the posts of Assistant Conservator of Forests and Range Forest Officer, as per the Recruitment Rules for the said posts.

11. At this stage, it would be necessary to advert to the relevant Rules. The State Government has framed Rules under the proviso to Article 309 of the Constitution. These Rules are called "the Assistant Conservator of Forest/ Range Forest Officer's Competitive Examination Rules, 2008" ("the Rules" for short). Rule 13 is relevant and provides as under:

13. Educational Qualifications:

(1) A candidate shall hold a Bachelor's degree of any University incorporated by an Act of the Parliament or State Legislature in India or other educational institution established by an Act of Parliament or declared to be deemed as a University u/s 3 of the University Grants Commission Act, 1956 with one of the following subjects, namely:

Botany, Chemistry, Geology, Mathematics, Physics, Statistics, Zoology or Bachelor's Degree in Animal Husbandry and Veterinary Science, Agriculture, Forestry or Engineering or possess an equivalent qualification recognized as such by the Government for this purpose: Provided that a candidate who has appeared at a degree examination, but the result is not declared the passing of which would render him educationally qualified for the examination mentioned in Rule 3, shall also be eligible for admission to the Preliminary Examination.

(2) The candidate shall possess the following minimum physical standard:

Physical Standards	Candidate	Scheduled Candidate	Origin (Except Tribes of Gujarat)	Scheduled Candidate origin	Tribes of Gujarat
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Male

Female Male

Female

(a) Height 165 Cms.

158 Cms. 160 Cms.

156 Cms.

(b) Chest

Normal 79 Cms.

74 Cms. 76 Cms.

71 Cms.

Expanded 84 Cms.

79 Cms. 81 Cms.

76 Cms.

Expansion 5 Cms.

5 Cms. 5 Cms.

5 Cms.

(3) All candidates who are declared qualified by the Commission for appearing in the Main Examination shall require to produce proof of passing the degree examination along with their application for the Main Examination. A candidate who fails to produce the proof of passing the degree examination shall not be eligible for admission to Main Examination:

Provided that the candidate, in addition to the qualification specified in

12. The proviso to Sub-rule (3) of the above-quoted Rule stipulates that the candidate, in addition to the qualification specified in Sub-rule (1), shall possess the requisite qualifications as prescribed in the relevant Recruitment Rules of the respective post. At this juncture it would be necessary to examine the relevant Recruitment Rules for the posts of ACF and RFO.

13. The Assistant Conservator of Forests in the Gujarat Forest Service, Class II, Recruitment Rules, 2007, (hereinafter referred to as "ACF Rules" for short) have been framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. The said Rules have been amended vide Notifications of the Forests and Environment Department dated 15.02.2008 and 18.05.2009, the relevant of which is Notification dated 15.02.2008. By virtue of the said amendment, Rule 4(b) of the ACF Rules has been substituted. Rules 4, 5 and 6, of the ACF Rules, as amended, which are relevant to the issue involved in the petition, read thus:

4. To be eligible for appointment by direct selection to the post mentioned in Rule 2, a candidate shall,

(a) not be less than 21 years of age and not more than 28 years of age;

(b) possess a bachelor's degree of any of the Universities established or incorporated by an Act of Parliament or State Legislature or any other educational institution recognized as such or declared to be deemed University u/s 3 of the University Grants Commission Act, 1956 with one of the following subjects namely: (I) Botany, (ii) Chemistry, (iii) Geology, (iv) Mathematics, (v) Physics, (vi) Statistics or (vii) Zoology or a bachelor's degree in (i) Animal Husbandry and Veterinary Science, (ii) Agriculture, (iii) Forestry, or (iv) Engineering, or possess an equivalent qualification recognized as such by the Government for this purpose.

(c) posses the following minimum physical standards:

Physical Standards Candidate (Except Tribal Candidate of Gujarat Origin) Tribal Candidate Gujarat origin

Male Female Male Female

(a) Height 165 Cms. 158 Cms. 160 Cms. 156 Cms.

(b) Chest

Normal 79 Cms. 74 Cms. 76 Cms. 71 Cms.

Expanded 84 Cms. 79 Cms. 81 Cms. 76 Cms.

Expansion 5 Cms. 5 Cms. 5 Cms. 5 Cms.

4. The candidate appointed by direct selection shall be kept on probation for a period of two years

5. The candidate appointed by the direct selection shall during his probation be required to undergo a course of forestry for two years at an institution recognized by the Government and to obtain Diploma or Degree or Certificate in Forestry.

14. The Range Forest Officer, Class II, Recruitment Rules, 2008, (hereinafter referred to as "RFO Rules" for short) framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, have been published vide Notification dated 31.03.2008, as amended by Notifications dated 12.05.2008 and 12.03.2009. The relevant extract of Rules 4, 5 and 6 of the RFO Rules reads as follows:

4. To be eligible for appointment by direct selection to the post mentioned in Rule 2, a candidate shall,

(a) not be more than 28 years of age;

Provided that the upper age limit may be relaxed in favour of a candidate who is already in the service of the Government of Gujarat in accordance with the provisions of the Gujarat Civil Services Classification and Recruitment (General) Rules, 1967;

(b) possess a Bachelor's degree of any of the University established or incorporated by an Act of Parliament or State Legislature or any other educational institutions recognized as such or declared to be deemed University u/s 3 of the University Grants Commission Act, 1956 with the one of the following subjects, namely:

(i) Botany, (ii) Chemistry, (iii) Geology, (iv) Mathematics, (v) Physics, (vi) Statistics (vii) Zoology or a bachelor's degree in Animal Husbandry and Veterinary Science, Agriculture, Forestry or Engineering, or possess an equivalent qualification recognized as such by the Government for this purpose.

(c) posses the following minimum physical standards:

Physical Standards Candidate Scheduled Candidate Origin) (Except Tribes of Gujarat Scheduled Candidate origin Tribes of Gujarat

Male

Female Male

Female

(a) Height 165 Cms.

158 Cms. 160 Cms.

156 Cms.

(b) Chest

Normal 79 Cms.

74 Cms. 76 Cms.

71 Cms.

Expanded 84 Cms.

79 Cms. 81 Cms.

76 Cms.

Expansion 5 Cms.

5 Cms. 5 Cms.

5 Cms.

(d) Possess the basic knowledge of computer application as prescribed in the Gujarat Civil Service Classification and Recruitment (General) Rules, 1967;

(e) Possess adequate knowledge of Gujarati or Hindi or both;

5. The candidate appointed by direct selection shall be required to undergo a walking test of 25 kms in case of a male candidate and 16 kms in case of a female candidate within four hours duration.

6. A candidate appointed by the direct selection shall be required to undergo training for a period as prescribed by the Government for the Range Forest Officer Course at Forest Rangers College.

15. It would now be fruitful to advert to the settled principles of law laid down by the Supreme Court regarding interpretation of a statutory provision. In Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, the Supreme Court, after considering several judgments, has succinctly summed up the principles of interpretation of statutes, as below:

The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. The literal rule of interpretation is not only followed by judges and lawyers, but it is also followed by the layman in his ordinary life. The meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean. (Paras 57 and 58)

The first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Even if the literal interpretation results in hardship or inconvenience, it has to be followed. (Paras 40, 46, 47 and 43)

The language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result. Where the legislative intent is clear from the language, the court should give effect to it, and the court should not seek to amend the law in the garb of interpretation. (para 40)

Thus, departure from the literal rule should only be done in very rare cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible. Once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. It is for the legislature to amend the law and not the Court. The Court cannot legislate under the garb of interpretation. Hence there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the courts. In fact, judicial legislation is an oxymoron. (Paras 43, 48 and 54)

In the present case, the literal rule applies. Other rules have no application in interpretation of Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 as the language of Section 31 is plain and clear, and cannot be said to be ambiguous or resulting in some absurdity. (Paras 59 and 50)

Resort can be had to the legislative intent for the purpose of interpreting a provision of law when the language employed by the legislature is doubtful or

ambiguous or leads to some absurdity. However, when the language is plain and explicit and does not admit of any doubt, the court cannot by reference to an assumed legislative intent expand or alter the plain meaning of an expression employed by the legislature. Where the language is clear, the intention of the legislature has to be gathered from the language used. (Paras 51 and 52)

16. In Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, the Supreme Court held:

19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

17. In Union of India (UOI) and Another Vs. Hansoli Devi and Others, the Supreme Court has observed:

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

18. In Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, the Supreme Court held that:

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

(emphasis supplied) 19. Keeping in mind the above principles of law, let us again refer to the Rules. From a comparative perusal of the ACF Rules and the RFO Rules, it transpires that the requisite educational qualifications for candidates for the posts of ACF and RFO are similar. The candidate should possess a Bachelor's Degree in Science of any University incorporated by an Act of Parliament or State Legislature in India or other educational institution established by an Act of Parliament or declared to be deemed as a University u/s

3 of the University Grants Commission Act, 1956, with one of the subjects stipulated in the aforementioned Rules. These subjects include the subjects of Botany, Chemistry, Physics and Zoology. The Petitioners herein possess a degree of B. Sc. and Microbiology is their special or principal subject. However, their mark sheets of the First and Second Years show that they have studied the subjects of Physics, Chemistry, Botany and Zoology, which subjects are specifically mentioned in the above-quoted Rules. From a bare reading of the Rules it transpires that they possess the B. Sc. degree with one of the specified subjects.

20. It would be relevant to consider the specific language and the words used in the Rules. It is stated that a candidate must possess a Bachelor's degree of any recognized University with one of the subjects named therein, such as Botany, Chemistry, Physics and Zoology. If Rule 4(b) of the ACF Rules is read carefully, it is seen that the first portion thereof envisages that the candidate should possess a Bachelor's Degree with one of the specified subjects, whereas the latter portion stipulates that a candidate should possess a Bachelor's Degree in Animal Husbandry and Veterinary Science or a Bachelor's Degree in Agriculture, or a Bachelor's Degree in Forestry or a Bachelor's Degree in Engineering, or possess an equivalent qualification recognized as such by the Government for this purpose. From the words used while framing the Rule, it is clear that it provides for a Bachelor's Degree with the subjects of Botany, Chemistry, etc. or Bachelor's Degree in Animal Husbandry and Veterinary Science, Agriculture, Forestry, or Engineering; meaning thereby that the Bachelor's Degree envisaged by the Rules should be with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology. Admittedly, the Petitioners have studied Botany, Chemistry, Mathematics, Physics, and Zoology in their Higher Secondary and also in their First and Second Years of the B. Sc. Degree course, though the subject of Microbiology is their principal or special subject. Therefore, they have a Degree of Bachelor of Science with Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, as stated in the Rules. As such, there is no ambiguity in the Rules which would lead to a different interpretation or meaning.

21. The language of the above-mentioned Rule is clear and unambiguous. The word `with' connotes inclusion and not exclusion and the intention of the Legislature is clearly demonstrated. The word `in' had been used in the latter portion of the Rule. Had it been the intention of the Legislature that the Bachelor's Degree should specifically be `in' Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology, the said word would have been used instead of `with', as has been done in the case of the subjects of Animal Husbandry and Veterinary Science, Agriculture and Forestry or Engineering. The Legislature is presumed to have used the language it actually intends to use, keeping in view the Legislative intent. The words used have to be understood in their normal, ordinary sense. The word `with' is to be understood in its ordinary sense, therefore, proper effect should be given to its meaning. The only prudent

and rational connotation and interpretation of the word `with" would be an inclusive one and not an exclusive one, whereas the connotation of the word `in" is specific. Had the word `in" been used instead of `with", it would have meant that candidates would have to possess a Bachelor's Degree in Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology and not with the said subjects. However, this has not been done which demonstrates the intention of the Legislature.

22. As per the Shorter Oxford English Dictionary, Fifth Edition, the word `with" means:

... Accompanied by; having (a person or thing) as an addition or accompaniment. Freq. used to connect two nouns, in sense `and - as well". Including, counting. As part of the same combination, arrangement, outfit, as; in the same category as....

In addition to, besides (with neg.) except.....

23. From the above, it is clear that the intention of the Legislature in using the word `with" is inclusive rather than exclusive. As distinguished from the word `in" used before the subjects of Animal Husbandry and Veterinary Science, Agriculture, Forestry or Engineer, which is more specific.

24. Applying the principles of law laid down in the decisions referred to above, to the relevant Rule, the only clear and natural meaning that emerges is that the candidate should possess a Bachelor's Degree along with one of the specified subjects. The interpretation being resorted to by the Respondents that the subjects mentioned in the Rule should be the principal or special subject only, is not borne out from the language employed by the Legislature while framing the Rules. Moreover, the Rule nowhere states that the mark sheets of only the Third Year of Bachelor of the B. Sc. course should be scrutinized to ascertain whether the candidate has the necessary qualification with one of the specified subjects. Such a construction is clearly a distortion of the Rule and cannot be read into it, as is sought to be done by the learned Assistant Government Pleader.

25. It is not disputed that in the original record produced by the learned Assistant Government Pleader, no conscious decision has been taken by the State Government, at any point of time while framing the Rules or at the time of their amendment, to exclude the subject of B. Sc. (Microbiology) from the eligibility criteria. This aspect further, significantly demonstrates the intention of the Legislature.

26. Apart from the language used, the intention in framing the Rules has to be ascertained in relation to the nexus sought to be achieved which, in the present case, is recruitment to the posts of ACF and RFO. The educational qualifications include subjects in the Science Stream. If selected for recruitment, the candidates who have studied the above-mentioned subjects in their curriculum, are to be put on probation for two years. For the post of ACF, a two year training

course in Forestry is to be undergone and, in the case of RFO, apart from being on probation for a period of two years, the candidate shall be required to undergo training for a period prescribed by the Government. Ultimately, the object of the Rules is to recruit candidates for posts related to Forestry, for which specific training in Forestry is prescribed, irrespective of the subjects studied by the concerned candidate. Considering the above aspects, the interpretation of the Rule by the Respondents is neither borne out from the language employed in the Rule nor from a reading of the Rule in its entirety. Thus, it cannot be concluded that the intention of the Legislature is to exclude candidates who possess a Bachelor of Science Degree, having Microbiology as the special or principal subject, but who have graduated with one of the subjects stipulated in the Rules.

27. From the marksheets of the Petitioners, the following undisputed aspects emerge:

(a) The Degree Certificate issued by Saurashtra University to Petitioner No. 1, shows that she has passed the B. Sc. course in the First Class, and her special subject is Microbiology. The marksheets of the Higher Secondary course and the First and Second Year B. Sc. course show that she has studied and passed the subjects of Physics and Chemistry, as well, which are mentioned in the Rules.

(b) The B. Sc. Degree Certificate of Petitioner No. 2 reveals that he is a B. Sc. graduate from Sardar Patel University in the Second Class, and his principal subject is Microbiology. The marksheets indicate that Petitioner No. 2 has studied the subjects of Mathematics, Chemistry and Physics at the Higher Secondary level and the subjects of Physics, Chemistry, Botany and Zoology in the First and Second Years of the B. Sc. course.

(c) The Degree Certificate of Petitioner No. 3 issued by the Gujarat University, indicates that he has passed the degree of B. Sc. in the First Class with the special subject of Microbiology. The marksheets show that Petitioner No. 3 has studied the subjects of Mathematics, Chemistry and Physics at the Higher Secondary level and the subjects of Physics and Chemistry during the First and Second Years of B. Sc. course.

28. Thus, all the Petitioners possess Bachelor's Degrees in Science Stream subjects with two or more of the subjects stated in the Rules, such as Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology. Microbiology, which is the special or main subject of the Petitioners, is also a Science Stream subject, as are the subjects of Botany, Chemistry, Geology, Mathematics, Physics, Statistics or Zoology; therefore, there does not appear to be any rationale in excluding candidates who have studied the said subject as a principal or special subject.

29. There is another relevant aspect to the matter. In the representation made by Petitioner No. 1, a comparative table has been shown of the subjects studied in the First, Second and Third Years of the B. Sc. Microbiology, B. Sc. Botany, B.

Sc. Zoology, and B. Sc. Mathematics courses. The said subjects are Biology, Physics and Chemistry whereas in the Third Year in all these courses, the specialty is Special Micro, Special Botany, Special Zoology and Maths, respectively. This shows that the same Science subjects form a part of the curriculum in the courses of Microbiology, Botany, Zoology and Maths. This aspect has not been considered by the said Respondent. From the stand taken in the affidavit-in-reply, it appears that the recommendation made by Respondent No. 2 does not appear to have been accepted. Further, Rule 4 of the Rules empowers the Government to recognize a qualification as being equivalent for the purpose of recruitment. By letter dated 10.11.2010, Respondent No. 2, while expressing his opinion that persons with a B. Sc. degree in any Science subject should be permitted to sit for the main examinations, it has been stated that the State Government is to decide upon the issue of equivalence of the degree possessed by persons such as the Petitioners. Till date, no Notification regarding equivalence has been issued by the State Government, though it is within their knowledge that the Main Examination is fast approaching.

30. It has been contended by the learned advocate for the GPSC that in the advertisement issued by it, there is a specific mention that the candidate should possess a Bachelor's Degree in the subjects specified therein. In answer to this, the learned advocate for the Petitioners, has relied upon the judgment of the Supreme Court in *Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others*, to submit that the Rules would prevail over the advertisement. As discussed hereinabove, the word used in the Rules is that the candidate should possess B. Sc. degree with one of the specified subjects. If the language employed in the advertisement reads that the candidate should possess a degree in one of the specified subjects, it clearly shows that there is a departure from the Rules. In *Malik Mazhar Sultan and Anr. v. U.P. Public Service Commission and Ors.* (supra), the Supreme Court has held:

21. The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1-7-2001 and 1-7-2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the Rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

24. Now, to the present case, the only dispute is in respect of the age requirement. The resolution of the dispute would depend upon implementation of Rule 10 of the Rules. According to the main part of Rule 10, the minimum and maximum age requirement has to be as on 1st July next following the year in

which the notification for holding the examination by PSC inviting applications is published. That publication inviting applications is dated 22/28-11-2003. The next following year is "2004". Therefore, on the plain reading of the main part of Rule 10, the age requirement is to be seen as 1-7-2004.

In view of the principles of law laid down in the above-mentioned judgment, the contention of the learned advocate for the GPSC, therefore, does not deserve acceptance.

31. The learned advocate for the GPSC has also placed reliance upon a judgment of the Division Bench of this Court in *Hiren kumar V. Rupalia and Ors. v. Gujarat Public Service Commission and Anr.* -Letters Patent Appeal No. 2760 of 2010 in Special Civil Application No. 10124 of 2010 decided on 12.01.2011, wherein, it is said that the nature of the qualification is to be decided by the recruiting agency and the Court would not substitute its own wisdom in place of the recruiting agency, while exercising jurisdiction under Article 226 of the Constitution. It is also stated in the said judgment that there may be a large number of candidates who might not have applied on account of not having the requisite qualification.

These observations have been made in the context of the facts obtaining in that case, which are not similar to those of the present case. While the principle of law in the context of the particular facts of that case are not disputed, the judgment is not applicable in the factual and legal matrix of the present case, where the main and only issue revolves around the interpretation of the relevant Rule.

32. The cumulative effect of the above discussion, in my considered view, is that as per Rule 4 of the relevant Rules, for a candidate to be eligible for recruitment as ACF or RFO, he or she should possess a Bachelor of Science Degree with one of the subjects specified in the said Rules. Consequently, as the Petitioners possess a Bachelor of Science degree with one of the specified subjects, they cannot be said to be ineligible as per the Rules and ought to be permitted to sit in the Main Examination of the Combined Competitive Examination for the posts of ACF and RFO.

33. For the aforestated reasons, the petition is allowed. The Respondents are directed to permit the Petitioners to appear in the Main Examination of the Combined Competitive Examination for the post of Assistant Conservator of Forest and Range Forest Officer, pursuant to Advertisement No. 209/09-10 dated 01.03.2010. Rule is made absolute to the above extent. There shall be no orders as to costs. Direct Service of the Writ, today, is permitted.