



GOVERNMENT OF KERALA

Abstract

Science & Technology Department - Judgement dated 28/11/2022 in W.P(c) No. 4696/2021 Filed by Sri.Johney Philip - Complied with - Orders issued.

SCIENCE & TECHNOLOGY (A) DEPARTMENT

G.O.(Rt)No.6/2023/S&TD Dated,Thiruvananthapuram, 02-02-2023

Read 1. Minutes of the 42nd meeting of the Executive Committee dated 29/06/2015.

2. The representation dated 11.02.2021 submitted by the Johnney Philip before the Director, Srinivasa Ramanujan Institute for Basic Sciences (SRIBS).
3. The Writ Petition (c) No.4696/2021 filed by Sri.Johney Philip.
4. The Judgement dated 28/11/2022 in Writ Petition (c) No.4696/2021 filed by Sri.Johney Philip.
5. The representation dated 12.12.2022 submitted by the Johnney Philip before the Ex-Officio Principal Secretary, Science & Technology Department.

ORDER

Sri. Johnney Philip, who was appointed as a Technical Officer on contract basis for a research project, jointly conducted by the Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) in Kottayam and the Rajeev Gandhi Centre for Biotechnology (RGCB) in Trivandrum, filed a W.P(C)No.4696/2021 before the Hon'ble High Court seeking a declaration that his appointment was for a substantive post at the Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) and for a direction to disburse all service benefits on a retrospective basis from his date of appointment (14.03.2016) including pay revision and annual increments. The Hon'ble High Court, on it's judgement read as 4th paper above, ordered the following:

“Having considered the contentions advanced, I am of the opinion that the claim raised by the petitioner on the basis of Exhibit P3 notification and Exhibit P5 decision of the 3rd respondent, is liable to be considered by the 1 st respondent, and a reasoned order has to be passed thereon.

In the above view of the matter, there will be a

direction to the 4th respondent to forward Exhibit P13 representation submitted by the petitioner to the 1st respondent. The petitioner shall also make available a copy of any further representation he may wish to make before the 1st respondent. If such a representation is preferred within two weeks from date of receipt of a copy of this judgement, before the 1st respondent, the 1st respondent shall take up the same, consider and pass orders on the same with notice to the petitioner as well as the 2nd 4th respondents. The petitioner shall produce a copy of the writ petition along with a copy of the judgement before the 1st respondent for compliance. Appropriate orders shall be passed within a period of two months from the date of receipt of copy of the representation as directed above, from the petitioner. Till orders are passed and communicated on the petitioner, status quo as on today shall be maintained”.

2. In accordance with the court's decision, the Principal Secretary of the Science and Technology Department, Govt of Kerala held a hearing on January 12, 2023 at Srinivasa Ramanujan Institute for Basic Sciences, Kottayam. The applicant, the 3rd respondent and 4th respondent in the O.A were heard. The 4th respondent, Srinivasa Ramanujan Institute for Basic Sciences, stated that the position for which Sri. Johny Philip applied, and was appointed, was for a joint research program between Rajeev Gandhi Centre for Bio-Technology (RGCB) and Srinivasa Ramanujan Institute for Basic Sciences (SRIBS), and that it was clearly advertised as a temporary, project-based position. They further stated that the selection process and appointment letter also made it clear that the position was temporary and for a specific duration, and that Sri. Johny Philip's claim for a permanent position and retrospective benefits cannot be accepted based on these facts.

3. Sri. Johny Philip, the applicant of the OA, presented his case and submitted evidences, including his representation (Exhibit P13), the advertisement (Exhibit P3), and the decision of the 42nd Executive Committee of Kerala State Council for Science, Technology and Environment (Exhibit P5) to the first respondent. Sri. Johny Philip made the following claims and arguments in his presentation:

- a. Sri. Johny Philip argued that the advertisement, for the joint research program between Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) and Rajeev Gandhi Centre for Bio-technology (RGCB), stated that at the end of the planned five-year period, when Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) buildings and laboratories were fully established, SRIBS Kottayam would notify and transfer the research program and personnel to its campus in Kottayam. He believed that this meant he could continue in his post after the five-year project period.

• Sri. Johny Philip claimed that his appointment was for a Government

- b. Sri. Johnney Philip claimed that his appointment was for a Government approved position with a designated scale of pay, and argued that contract appointments are not generally made at a specific pay scale.
- c. The petitioner also argued that the 42nd Executive Committee of Kerala State Council for Science Technology & Environment has decided as follows:
 - i. **Appointments to be made against the posts as and when sanctioned.**
 - ii. **For joint research programmes with RGCB, Research Fellows & Research Associates may be engaged on project mode. The posts of Technical Officers (8 Nos) & Technical Assistants (8 Nos) for which applications were invited and processed may be submitted to the Govt. for approval.**

The petitioner argued that the decision of the 42nd Executive Committee indicated that the appointments of Research Fellows and Research Assistants were for the duration of the project, while the appointments of Technical Officer and Technical Assistant were made with Government approval and were not limited to the project's duration.

- d. Sri Johnney Philip also stated that he was compelled to sign an agreement with Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) that was created solely by the institute, and that he was verbally told by the then head of the institution of Srinivasa Ramanujan Institute for Basic Sciences (SRIBS) that the position may eventually become permanent. He also mentioned that he quit his previous job at a private company, which offered better benefits, based on this verbal assurance.
- e. The petitioner stated that according to the information obtained through the Right to Information Act, it is evident that he was appointed to a post that was transferred from Center for Water Resources Development and Management (CWRDM) to Srinivasa Ramanujan Institute for Basic Sciences (SRIBS), and since the position was sanctioned by the Government, he believed he had the right to permanency in the post.
- f. The petitioner also submitted that during his tenure at Srinivasa Ramanujan Institute for Basic Sciences (SRIBS), he did not receive any benefits in addition to pay and DA, and requested that he be granted all service benefits, including annual increments and benefits from pay revisions.
- g. Sri.Johnney Philip produced a judgment dated 03.09.2021 of Hon'ble

Supreme Court of India in Civil Appeal No.3922-3925 of 2017 filed by Somesh Thapliyal and another against Vice Chancellor H.N.B Garhwal University, and he claimed that this judgment is applicable in his case as well because he is also appointed as Technical Officer in a substantive post.

4. Government have examined the matter in detail. After evaluating the evidences, presented in the form of Ext.P3 (Notification dated 11.08.2014), Ext.P5 (Minutes of the 42nd Executive Committee of Kerala State Council for Science, Technology and Environment), Ext.P13 (the representation dated 11.02.2021 submitted by the Johny Philip before the Director Srinivasa Ramanujan Institute for Basic Sciences (SRIBS)), the representation dated 12.12.2022 submitted by Sri.Johny Philip, Judgement dated 03.09.2021 of Hon'ble Supreme Court of India in Civil Appeal No.3922-3925 of 2017 filed by Sri.Somesh Thapliyal and another against Vice Chancellor H.N.B Garhwal University, as well as all relevant files pertaining to his appointment, the following findings are made.

- a. It is evident from the advertisement that the positions notified were solely for the purpose of carrying out a research project of 5 year duration between the Srinivasa Ramanujan Institute for Basic Sciences in Kottayam and the Rajeev Gandhi Centre for Bio-Technology in Trivandrum. The relevant portion of the **advertisement** is reproduced below:

*"Applications invited for the following positions in
JOINT RESEARCH PROGRAM IN
TRANSLATIONAL CHEMICAL BIOLOGY*

***JOINT RESEARCH PROGRAM IN
TRANSLATIONAL***

CHEMICAL BIOLOGY

August 11, 2014

POSITIONS

Rajiv Gandhi Centre for Biotechnology (RGCB) invites applications for the following positions in its Joint Research Program with Srinivasa Ramanujan Institute for Basic Sciences (SRIBS), a new constituent institute of the Kerala State Council for Science, Technology and Environment (KSCSTE), in Chemical Biology laboratory incubated at the RGCB-Bio Innovation Center at Kazhakuttom, Thiruvananthapuram until SRIBS permanent infrastructure gets ready at Pampady in Kottayam District of Kerala, under an agreement with RGCB. These positions are for Srinivasa Ramanujan Institute for Basic Sciences (SRIBS). At the end of the planned

five year period. when the SRIBS buildings and laboratories is fully established, SRIBS will notify and transfer the research program and the personnel to its campus at Kottayam. This appointment to the joint research program being hosted at RGCB will be governed by SRIBS. KSCSTE Rules.

I. Name of Position : Senior Research Fellow

Number of positions : 8

Pay : Rs 18,000/- + 20% HRA

Age limit : 28 years as on 31.07.2014

Minimum Qualifications

1. Postgraduates in Chemical Sciences, Life Sciences, Biotechnology, Agricultural Sciences, Medical Sciences, Pharmaceutical Sciences or Veterinary Sciences.
2. Two years documented experience in Cell Biology, Molecular Biology, Chemical Science and/or Peptide Science with at least one publication in peer reviewed journal.

Job Description

Research Fellows will be assigned for experimental work which includes, chemical synthesis and purification of peptides, conduction bioassays, data analysis and in report preparation.

II. Name of Position : Technical Officer

Number of positions : 6

Pay: PB2 Rs. 9300-39100 with Grade Pay Rs. 4200/-

Age limit : 35 years as on 31.07.2014

Minimum Qualifications

1. Post-Graduation in Life Sciences/Chemical Sciences/Biotechnology/ Biomedical Sciences/ Computer Applications or B.Tech. in Chemical Engineering/Biotechnology/Biomedical Sciences/Computer Science or equivalent from a recognized University.
2. Two years documented experience in Cell Biology/Molecular Biology/ Chemical Sciences/Computer Application any reputed Government R&D organizations/other Government Institutions.

Job Description

Technical Officers will be responsible for laboratory work and coordination as well as managing sophisticated instrumentation.

...

Further, the General condition No 4 of the advertisement extracted below says:

“General Conditions/ Instruction

1. ...
2. ...
3. *Office Discipline and Conduct Rules and other service conditions for the above positions will be as per the SRIBS, KSCSTE Rules & Regulations. Rules & Regulations for all personnel posted to the RGCB Bio Innovation Center will be enforced by RGCB during the tenure of the MoU which is valid for five years.*
4. *This project employment can be terminated at any time during tenure of the program period by giving one month notice on either side. In exceptional cases, such appointments may be cancelled during the tenure of project without serving any notice on “with immediate effect basis”.*
5. *Merely fulfilling the requirements in the advertisement will not automatically entitle any candidate to be called for interview. The applications received will be scrutinized and candidates who in the opinion of the institute are likely to be suitable will be shortlisted for calling for interview. The decision of the institute in all these matters will be final. No interim enquiries/ correspondence/ communication of any sort will be entertained in the matter*
6. ...”

From the aforesaid facts, it is clear that the appointment of Sri. Johny Philip was purely a project employment. It is also to be noted that the permanent appointments are not typically made in research projects, and such appointments (purely temporary, either on a contract or daily wage basis) are made only for the duration of the project, and these appointments end when the contract/project ends.

- b. A discrepancy was found between the first and second statements in

Sri. Jorney Philip's representation (Exp. P13). In the first sentence, he claims that his appointment is permanent, but in the second sentence, he states that it is a temporary appointment in a joint research project between Srinivasa Ramanujan Institute for Basic Sciences and Rajiv Gandhi Centre for Bio- Technology. However, as previously stated, no permanent appointments are made in any research project.

- c. His claim that he was appointed in a sanctioned post and has been provided a 'scale of pay', as his remuneration has been examined in detail. Kerala State Council for Science, Technology and Environment service rules, applicable to Srinivasa Ramanujan Institute for Basic Sciences (SRIBS), says that a person can be appointed on contract basis for a specific duration against a sanctioned post. The relevant rule of KSCSTE (which is followed in the SRIBS) is reproduced below:

“...

By contract appointment

Notwithstanding anything contained in these rules Appointing Authority may, with the sanction of the Management Committee, appoint employees on contract basis subject to the condition that:

- i. terms and conditions of such appointment shall be fixed by the appointing authority in consultation with the person so appointed.*
- ii. such employees should possess the qualifications and experience prescribed in these rules.*
- iii. qualified employees are not available in the Council and*
- iv. there should be vacant post to accommodate the person so appointed.*

...”

SRIBS was a newly constituted institute under the KSCSTE in 2014, and a Management Committee was yet to be formed at the time of executing this joint research project. In the absence of a Management Committee for an R&D Institute of KSCSTE, the Executive Committee of the KSCSTE, which is the apex executive authority, can act for the Institute. Accordingly, the 42nd Executive Committee of the Kerala State Council for Science, Technology and Environment decided to hire personnel on a contract basis for the positions of Technical Officer and Technical Assistant, but only after the government creates the posts. According to KSCSTE rules, there must

be an open position to appoint someone on contract. Although the hired individuals will receive the appropriate pay scale for their position, they are only entitled to the lower pay scale and eligible allowances, without any annual increments. They will only receive the DA applicable from time to time, in addition to the pay. The appointment letter clarifies that they are only eligible for pay and allowances.

- a. Sri Johny Philip's assertion that the 42nd Executive Committee's action of seeking government approval for the positions of Technical Officer and Technical Assistant grants him a permanent appointment is a false and inaccurate representation of the facts. The purpose of the 42nd Executive Committee's decision, as explained above, was to obtain Government authorization for the creation of these posts, and not to request permission for appointing someone permanently. The relevant portion of the 42nd Executive Committee's decision is reproduced below.
 - i. **Appointments to be made against the posts as and when sanctioned.**
 - ii. **For joint research programmes with RGCB, Research Fellows & Research Associates may be engaged on project mode. The posts of Technical Officers (8 Nos) & Technical Assistants (8 Nos) for which applications were invited and processed may be submitted to the Govt. for approval.**
- e. In the appointment letter issued to Sri. Johny Philip it is specified that the appointment is for a fixed duration of 5 years, and that the appointee must agree to the terms and conditions outlined in an agreement. This clearly indicates that he was informed in advance about the nature and requirements of the appointment and also that he fully understood the terms and conditions before signing the agreement. Therefore, his claim that he was forced to sign the agreement is not accurate. Additionally, any claim that an officer of Srinivasa Ramanujan Institute for Basic Sciences verbally promised him permanent employment is not credible, as he was aware of the terms outlined in the appointment letter. Furthermore, his claim that he gave up a better job in a private company for this appointment is also not valid, as the terms of the appointment were clearly outlined in the appointment letter. The appointment letter is reproduced below.

Appointment letter

No.13/SRIBS-RGCB &SRIBS/2015/KSCSTE

06.02.2016

Mr.Johny Philip
House
P.O

Kochumadathil
Mattakkara
Kottayam-686 564

Dear Mr.Johny Philip,

Sub:SRIBS- Appointment for the post of Technical Officer for the Joint Research Programme of SRIBS with RGCB.

An MOU was entered into between SRIBS and RGCB to carry out a Joint Research Programme at RGCB Bio-innovation Centre, KINFRA Park, TVM for a period of 5 years. With reference to your application submitted against the advertisement No.SRIBS/RGCB/01/2014 dated 11.08.2014 for the post of Technical Officer in the above project, you are offered an appointment for a period of 5 years subject to the following terms and conditions:

1. You are expected to work at SRIBS incubator facility in the RGCB Bioinnovation Centre, at KINFRA Film & Video park, Kazhakkootam, Trivandrum till the infrastructure facilities are established at SRIBS Campus, Pampady, Kottayam.
2. You will be given the State Government scale of pay of Rs.13900-24040/- and allowances as applicable.
3. You will have to give an undertaking in the format which will be given to you at the time of your reporting to the effect that you accept the above terms and conditions before joining the post.

If you are agreeable to the above terms and conditions you are requested to report at SRIBS Office, Pampady, Kottayam at 10.00 AM on 19.02.2016. You are also requested to bring your certificates in original for verification and submit a set of self-attested copies to the proof of qualifications, experience, date of birth and address, and a recent passport size photo at the time of reporting.

Approved for issue

-Sd-

Section Officer

The last para of the agreement made between Sri.Johney Philip and SRIBS showing that the applicant have no claim for any permanent appointment by virtue of his appointment in the joint research programme is reproduced below.

“The first Party will have no claim for any permanent appointment by virtue of his appointment in the Joint Research Programme”.

f. With respect to his claim that he has not been given the benefits of ‘pay revision’, it is to be noted that he is provided the pay as per the 9th Kerala State Pay Revision. The implementation of the subsequent pay revision (10th pay revision) is still pending and is currently in the process of being implemented at the Srinivasa Ramanujan Institute for Basic Sciences.

5. The Honorable Supreme Court's ruling on September 3rd, 2021 in Civil Appeal No. 3922-3925 of 2017, filed by Sri. Somesh Thapliyal and another, against the Vice Chancellor of H.N.B Garhwal University, which was produced by Sri. Johney Philip during the hearing, was thoroughly reviewed. This decision concerns appointments made to regular teaching positions, following the selection procedure outlined in the Uttar Pradesh State University Act, 1973. As specified in the Act of 1973, the appointment of the petitioners, as stated in the ruling, was approved by the Executive Council and appointed by the University's Vice Chancellor. However, in Sri. Johney Philip's case, the advertisement and his appointment was for a research project, and not for a regular post. . Additionally, Sri. Johney Philip's appointment was not approved by the Management Committee of Srinivasa Ramanujan Institute for Basic Sciences(SRIBS) , which is a mandatory requirement for appointments in permanent posts, as outlined in the service rules of Kerala State Council for Science Technology and Environment . Hence, it appears that this judgment does not apply to Sri. Johney Philip's case.

6. It is noteworthy that Sri. Johney Philip's temporary appointment in a Joint Research Project at SRIBS was made in 2016 during the time when the Honourable Supreme Court's judgment dated April 10, 2006 (in the case of Secretary, State of Karnataka vs Umadevi) was still in effect. This judgment clearly states that no one appointed on contract can be made permanent and doing so would violate the judgment. Following this judgment, the Government of Kerala issued a circular (Circular No.55/2022/Fin dated 08.07.2022) in compliance with the judgment, which reiterated its strict compliance in the Kerala state. Additionally, as per Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi is binding on all temporary appointments unless over ruled by a larger Bench. Therefore, under no circumstances can Sri Johney Philip's temporary appointment be made permanent at Srinivasa

Ramanujan Institute for Basic Sciences(SRIBS).

7.The observations above clearly show that Sri Johnney Philip's appointment was solely temporary based on a contract for a five-year period, as stated in the appointment order and the signed agreement, for a research project that was set to end upon completion of the contract term (five years from the date of joining). It is important to note that a contract appointment terminates at the end of the contract period, as stated in the Supreme Court judgment on Secretary, State of Karnataka vs. Uma Devi. Additionally, a temporary employee is not eligible to be made permanent at the end of their term of appointment. It is also evident that Sri Johnney Philip was fully aware that his appointment was only for a five-year period, as stated in the terms and conditions of his appointment. Furthermore, his appointment was in accordance with the Kerala State Council for Science Technology and Environment (KSCSTE) rules, which is followed in SRIBS and, as it was for a contract-based research project, he is only entitled to the pay and allowances in the provided scale of pay and no annual increment.

8.Therefore, Sri Johnney Philip's requests in his submissions dated 11.02.2021 and 12.12.2022 to declare him a permanent employee on the Technical Officer position at the Srinivasa Ramanujan Institute for Basic Sciences in Kottayam, as well as his request for retrospective service benefits, such as annual increments, starting from his appointment date of 14.03.2016, cannot be approved.

9. In the above circumstances, Government are pleased to issue orders, directing the Director, SRIBS to terminate the contract appointment of Sri. Johnney Philip, Technical Officer in the Joint Research Programme between SRIBS and RGCB, with immediate effect.

10.The order of Honourable High Court dated 28/11/2022 in Writ Petition (c) No.4696/2021 filed by Sri. Johnney Philip is thus complied with.

(By order of the Governor)
PROF DR K P SUDHEER
EX-OFFICIO PRINCIPAL SECRETARY

To:

Advocate General, Ernakulam (with C/L)

The Director, Srinivasa Ramanujan Institute for Basic Sciences, Kottayam
Member Secretary, Kerala State Council for Science Technology &
Environment, Thiruvananthapuram.

Sri. Johnney Philip, Kochumadathil House, Mattakkara P.O, Kottayam-686 564
(through registered post)

Information & Public Relation Department (for publishing in the website)

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