

1988 February 29

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IACOVOS A. CHRISTODOULOU,

*Applicant,*

v.

THE GRAIN COMMISSION OF CYPRUS,

*Respondent.*

(Case No. 692/86).

5 *Grain Commission—Promotions—Combined establishment—Director of respondent turned down applicant's request for promotion on the ground that applicant has not completed ten years' service in the lower post, as provided by the relevant scheme of service—The application and interpretation of the scheme of service was within the exclusive province of the Commission—It follows that, no matter how obvious the meaning of the scheme is, the sub judice decision, has to be annulled for lack of competency.*

*Competency—Lack of—Ground for annulment.*

The facts of this case sufficiently appear in the judgment of the Court.

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*Sub judice decision annulled.  
No order as to costs.*

*Cases referred to:*

*Kyriacou v. Republic* (1985) 3 C.L.R. 2414;

*Tsangari v. Republic* (1986) 3 C.L.R. 2608.

**Recourse.**

Recourse against the refusal of the respondent to promote applicant to the post of Accounting Officer II.

A. *S. Angelides*, for the applicant.

C. *Velaris*, for the respondent.

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*Cur. adv. vult.*

LORIS J. read the following judgment. By means of the present recourse the applicant challenges the refusal of the respondent Commission to promote him, as from 1 September 1986, to the post of Accounting Officer II, which is on a combined establishment with the post of Accounting Officer III, held by the applicant. 10

On 3 August 1986 the applicant addressed a letter to the Director of the respondent Commission stating that as under Note (3) of the Scheme of Service for the post of Accounting Officer II, he would be completing the required, under the Scheme, five years' service to the post of Accounting Officer III by 31 August 1986, and would be eligible for promotion to the post of Accounting Officer II as from 1 September 1986, appropriate action should be taken for his promotion on scale A7. 15 20

The Director of the Respondent Commission in his reply of 16.8.86, informed the applicant (through applicant's superior) that the relevant Scheme of Service in force provides ten years of service and not five as stated by the applicant, thereby turning down the aforesaid request of the applicant. 25

Counsel for the applicant argued that the only competent organ under the Law to decide, on the basis of the particular facts of the case of the applicant, on the interpretation and application of the relevant scheme of service, was the Board of the respondent Commission and not the Director and, therefore, the sub-judice 30

decision being the decision of the Director has to be annulled, having been reached at, by an incompetent organ.

Counsel for the respondent Commission submitted that as both, on the face of the relevant Scheme of Service and on its true  
5 interpretation the applicant could not qualify for promotion, as he did not possess the ten years' experience set forth in the aforesaid Scheme of Service, it was unnecessary for the Director to place the matter before the Commission for a decision to that effect, as the matter was obvious and there was no substance whatever in  
10 the request of the applicant.

It is well settled that lack of competence is a ground for annulment (vide *Kyriacou v. The Republic*, (1985) 3 C.L.R. 2414, 2418, *Tsangari v. The Republic* (1986) 3 C.L.R. 2608, 2611).

Having given to the matter due consideration, I have reached  
15 the conclusion that the competent organ, under the Law, to decide on the request of the applicant was the respondent Commission and not the Director himself, no matter how obvious was, in the opinion of counsel for the Commission, that the applicant was not qualified under the relevant scheme of service. The application  
20 and interpretation of the scheme of service was within the exclusive province of the respondent Commission and the Director should have conveyed the request of the applicant, for appropriate action, to the organ vested with such power.

In the result the present recourse succeeds, and the sub-judice  
25 decision is hereby annulled. In the circumstances there will be no order as to costs.

*Sub judice decision annulled.  
No order as to costs.*