

**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA.**

In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of violation of Article 12(1) of the Constitution.

Supreme Court Application

No. S.C. (F/R) 39/2019.

1. Bamunu Arachchige Pasasna Abhinithi  
Bamunu Arachchi.

Minor appearing through her Mother.

2. Wijayasinghe Arachchige Udyoga  
Sanwarani Wijayasinghe.

(Mother of the 1<sup>st</sup> Petitioner)

**both of**

No. 215/R/6,

Anderson Flats,

Narahenpita

Colombo. 05.

**Petitioners.**

**Vs.**

**SC/FR/39/19.**

1. Mrs. S.S.K. Aviruppola  
Principal,  
Visakha Vidyalaya,  
133, Vajira Road,  
Colombo 05.
  
2. Director – National Schools,  
Ministry of Education,  
“Isurupaya”, Pelawatte,  
Battaramulla.
  
3. Secretary,  
Ministry of Education,  
“Isurupaya”, Pelawatte,  
Battaramulla.
  
4. G.P Desandi Chiranthi (Minor)  
Appearing through her mother;
  
- 4A. K.M. Prabashini.  
Mother of the 4<sup>th</sup> Respondent.

**both of**

No. 41/14, Ekamuthu Mawatha,  
Puwakwatta,  
Meegoda.

5. Zonal Director of Education,  
Zonal Education Office,  
Hingurakgoda.

6. Hon Attorney General.  
Attorney General's Department,  
Colombo 12.

**Respondents.**

Before : Hon. L.T.B. Dehideniya, J.  
Hon. P. Padman Surasena, J  
Hon. E.A.G.R. Amarasekara, J.

Counsel : Harsha Fernando instructed by Jagath Thalgaswatte for  
the Petitioner.  
Rajiv Goonetillake, SSC, for the Hon. Attorney General.

Argued on : 29.08.2019.

Decided On : 26.05.2020.

**E.A.G.R. Amarasekara J.**

The 2<sup>nd</sup> petitioner who is the mother of the 1<sup>st</sup> petitioner and the 1<sup>st</sup> Petitioner by their Petition dated 01.02.2019 have complained to this Court that their fundamental rights guaranteed by Article 12(1) of the constitution were infringed by the Respondents when the 1<sup>st</sup> Respondent wrongfully and arbitrarily refused to admit the 2<sup>nd</sup> Petitioner's daughter (1<sup>st</sup> Petitioner) to grade 1 of the Visakha Vidyalaya, Colombo 05.

The reason given for this refusal appears to be that the Petitioners had failed to obtain required minimum marks under the category they applied for the admission as per the Circular marked **P 11**. This court by its order dated 05.03.2019 granted leave to proceed under Article 12(1) of the Constitution.

On or about 1<sup>st</sup> July 2018, as the mother of the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Petitioner, duly submitted an application for admissions of the 1st Petitioner to grade 1 of the Visakha Vidyalaya, Colombo 05, under the category "Children of persons in the staff of institutions directly involved in the school education"( for easy reference hereinafter sometimes referred to as the "Education Category") - vide clause 6(IV) of **P11** and application marked as **P12** . The 2<sup>nd</sup> Petitioner states that being a teacher of the Sri Lanka Teacher Service, the 1<sup>st</sup> Petitioner is entitled to be selected under the aforesaid category.

In addition to the application for admission made to Visakha Vidyalaya, Colombo 05, applications on behalf of the 1<sup>st</sup> Petitioner were also submitted to Sirmavo Bandaranayike Vidyalaya, Colombo and St. Paul's Girls' School, Milagiriya. The 1<sup>st</sup> Petitioner was offered admission to St. Paul's Girls' School, Milagiriya. The Petitioners state that, however, the first and the most preferred choice was Visakha Vidyalaya, Colombo 05.

Petitioners were called under the Education Category for an interview held on 25<sup>th</sup> August 2018 at Visakha Vidyalaya, Colombo 05. The 2<sup>nd</sup> Petitioner states that at the interview;

- Upon perusal of the documents produced by the Petitioners, the 1<sup>st</sup> Petitioner was awarded only 40 marks.
- The Petitioners were wrongfully and arbitrarily deprived of 15 marks that should have been awarded for the 2<sup>nd</sup> Petitioner's service in a "difficult" area i.e. at Primary Section of the Minneriya Central College/National College. *(whether what is needed is service in a difficult area or service in a difficult school will be discussed later on this judgment)*
- Above marks were not awarded arbitrarily, in spite of the 2<sup>nd</sup> Petitioner having duly earned them and such being officially certified by the relevant authorities. In this regard courts attention has been brought to **P10**.
- However, 1<sup>st</sup> Respondent has refused to grant marks under category of 'period of service in difficult schools', stating that

the Minneriya Primary School is not a difficult school as per Directive 2005/01 marked as **P19**. (*This court observes that what is mentioned in P14 is that Minneriya Primary School which belongs to Minneriya Central College is not a difficult School as per the 2005 CD*)

- Thereafter, the 2<sup>nd</sup> petitioner was given a mark sheet (**P14**) to sign which the 2<sup>nd</sup> petitioner signed as she had no choice. (vide paragraph 22 of the Petition)

The Petitioners further submitted that the temporary list (**P15**) of the students who had been selected for admission were released and displayed on or about 21<sup>st</sup> November 2018 and the 1<sup>st</sup> Petitioner had secured admission as the last child. Thus, the 2<sup>nd</sup> Petitioner did not take any action to canvass for the 15 marks that should have been awarded for the period of services in a difficult school - vide paragraph 24 of the petition.

It appears that after an appeal made by another applicant the 1<sup>st</sup> Petitioner was removed from the list to include the said applicant's child. **P17** was written to the 3<sup>rd</sup> Respondent Secretary only after the release of the final list.

The Petitioners state that on 4<sup>th</sup> January 2019, the 2<sup>nd</sup> Petitioner had been informed by the secretary to the appeals board that, upon considering an appeal under the same category, 1<sup>st</sup> Petitioner was removed from the final list which was to be released on the next day. This was evidenced by not having the 1<sup>st</sup> Petitioner's name in the final list published on 5<sup>th</sup> January 2019 (**P16**) – vide paragraphs 25 and 26 of the Petition.

Being aggrieved by the above turn of events, the 2<sup>nd</sup> Petitioner on 08<sup>th</sup> of January 2019 submitted an appeal(**P17**) to the Secretary to the Ministry of Education (3<sup>rd</sup> Respondent). The Petitioners state that they received a partial response to **P17** by the letter marked **P18** -vide paragraph 27 of the Petition. Nevertheless, letter marked **P18** itself indicates that it was issued on the request of the 2<sup>nd</sup> Petitioner. The said letter marked **P18** issued by Director of Education (Data management) reads that, they have categorized school-lists as per circular No.2005/01 (**P19**) only by way of reports of school census taken from 01.06.2005.It further reveals that, since they do not have categorization as per the facilities available prior to 01.06.2005, they cannot express whether the schools concerned ( Minneriya Central College and Minneriya Primary School) were difficult schools but it clearly says that as per the census of schools in 2005 the Minneriya Central College was considered as a 'very convenient school' and as per the 2013 census Minneriya Primary School was an 'convenient school'. It is also stated in **P18** that it is advisable to check the log book of the school or to ask the opinion of the Zonal Director of Education. However, as the categorization has to be done according to the Circular No.2005/01 dated 18.01.2005, non availability of such categorization as per the said circular prior to 2005 is fathomable and further, since, as per **P9**, the Minneriya Primary College was established on 31.12.2012, availability of its categorization from 2013 can also be understood.

Further the Petitioners in their petition refers to the criteria referred to in circular marked P19 and give a self-assessment to indicate that Minneriya Primary School/Section was a difficult school during her tenure of service prior to her transfer from the same to Ananda College.

As per the Petition, it is clear that the stance of the Petitioners is that the service of the 2<sup>nd</sup> Petitioner in the aforesaid school in Minneriya should have been considered for all intent and purposes as a service in a difficult school (vide paragraph 28 of the petition) and they should have been awarded 15 marks for that. In this regard the Petitioners seem to rely on the letter marked as **P10** issued by the Principal of the Minneriya Primary School and certified by the Zonal Director of Education. (*Whether this document submitted as **P10** is supportive to establish the Petitioners' case will be discussed later in this judgment.*) However, the Petitioners argue before this court that the Petitioners were awarded only 40 marks when they should have been awarded 55 marks under the category they applied for the admission. The threshold mark was 42.5 under the aforesaid category. The Petitioners allege that the denial of admission of the 1<sup>st</sup> Petitioner to Visakha Vidyalaya, Colombo 05 is arbitrary and amounts to a violation of petitioners' fundamental rights guaranteed under Article 12 (1) of the Constitution.

However, it appears that the marks given by Sirirmawo Bandaranaike Vidyalaya is the same as Visakha Vidyalaya while St. Paul's Girls' School had given 15 marks for the 2<sup>nd</sup> Petitioner's service in difficult schools to total up the marks given to the Petitioners to be 55 marks for the application made to that school.

The Petitioners have tendered the following documents in support of their case before this court. Some of them have already been referred to above.

- **P1**- Birth Certificate of the 1<sup>st</sup> Petitioner
- **P2A**- National Identity Card of the 2<sup>nd</sup> Petitioner
- **P2B**- Marriage Certificate of the 2<sup>nd</sup> Petitioner

- **P2C** – National Identity Card of the Father of the 1<sup>st</sup> Petitioner
- **P2D**- Official Identity Card of the Father of the 1<sup>st</sup> Petitioner
- **P3**- Appointment Letter of the 2<sup>nd</sup> Petitioner dated 04.12.1998 to the Minneriya Central College which appears to be an appointment to a National School.
- **P4**- Letter of Confirmation of Appointment dated 20.02.2003
- **P4A**- Copy of the log entry dated 04.01.1999 issued on 15.09.2005 by the Principal of Minneriya National School which shows that the 2<sup>nd</sup> Petitioner reported for work at Minneriya National School
- **P4B**- Service Certificate dated 30.10.2006, issued by the Principal, Minneriya National School, which indicates that the 2<sup>nd</sup> Petitioner served in the said school from 04.01.1999 to 25.09.2005
- **P5A**- Transfer letter dated 06.09. 2005 that relates the transfer of the 2<sup>nd</sup> Petitioner from Minneriya National School to Ananda College, Colombo
- **P5B**- A letter dated 26.09.2005 which shows that the 2<sup>nd</sup> Petitioner reported to work at Ananda College
- **P6**- Postgraduate Diploma Certificate that belongs to the 2<sup>nd</sup> Petitioner
- **P7, P7A and P7B**- Letters relating to the transfer of 2<sup>nd</sup> Petitioner to Thurstan College, Colombo from Ananda College and her service in Thurstan College
- **P8**- Service description of the 2<sup>nd</sup> Petitioner
- **P9**- A letter confirming the establishment of Minneriya Primary School as a separate school under the North Central Provincial Council from 31.12.2012
- **P9A to P9D**- Google maps showing the setting of Minneriya Primary School

- **P10-** A certificate dated 20.09.2017, issued by the Principal of Minneriya Primary School and certified by the Zonal Director of Education, to certify the service of the 2<sup>nd</sup> petitioner in a difficult school
- **P11-** Circular containing the instructions and directions in relation to the admission of children to Grade 1 for the year 2019.
- **P12-** Application for the admission to Grade 1
- **P13A to P13D-** Certificate of Residence, Details of Leave Taken, Lease Agreement and Electoral List respectively
- **P14-** Mark Sheet in relation to the Interview held for the admission to Grade 1
- **P15 and P16** Temporary List and Final list under the Education Category respectively of Visakha Vidyalaya, Colombo 5.
- **P 17-**An appeal to the 3<sup>rd</sup> Respondent dated 08.01.2019.
- **P 18-** A letter issued on behalf of the 3<sup>rd</sup> Respondent on the request of the 2<sup>nd</sup> Petitioner
- **P19-** Circular No.2005/01 dated 18.01.2005
- **P20-** Guidelines for Planning at School Level
- **P21A and P21B-** Mark Sheet of the Interview held by St. Paul's, Girls' School and Mark Sheet of the Interview held by Sirimavo Bandaranaike Vidyalaya

The 3<sup>rd</sup> Respondent filing his affidavit in objection has stated that the 2<sup>nd</sup> Respondent was appointed on 04.01.1999 to the Minneriya National School and was transferred from the said school on 06.09.2005 and transfer was done by the Ministry since the said school as a National School came under the Ministry. In

this regard he has brought this court's attention to **P3** and **P5A** and also to **P4B** service certificate which was issued by the Principal of Minneriya National School after her transfer from the said school. The stance of the 3<sup>rd</sup> Respondent is that Minneriya National School was a convenient school and generally national schools are not classified as difficult schools. The 3<sup>rd</sup> Respondent admits that the primary section of the Minneriya National school was made a separate school in December 2012. In this respect he has submitted the document marked as **R1** and **R1** states that, in 1992, the said primary section was taken away to a place about 1 Km away from the main school but was administered by the Minneriya National School till its separation as a primary school on 31.12.2012. The 3<sup>rd</sup> respondent submits that the document marked **P10** is not a valid document since it is issued by the Minneriya Primary School which did not exist prior to 2012 and does not have the service records of the 2<sup>nd</sup> Petitioner and such service certificate can only be issued by the Minneriya National School where the 2<sup>nd</sup> Respondent served till 2005. The document marked as **R2** by the said Respondent indicates that only the records of 2005/2004 census are available and as per the schedule relating to 2004 census of schools, Minneriya central college was referred to as a National School and it was also a popular school. It also reveals that the said Central College was promoted as a National School on 12.03.1996. Thus, the stance of the 3<sup>rd</sup> Respondent is that the service of the 2<sup>nd</sup> Respondent in Minneriya was at the Minneriya Central college which became a National School in 1996 and her service was not in a difficult school.

### **Analysis of the Case.**

The issue to be determined by this court is whether the Petitioners' Fundamental Rights guaranteed under Article 12(1) of the Constitution had been violated by the 1<sup>st</sup> Respondent by the refusal to grant 15 marks to the Petitioners' application under the category of "period of service in difficult schools", taking into account the service of the 2<sup>nd</sup> Petitioner in the Minneriya Central College/ National School as a teacher in its primary section, which refusal deprived the admission of the 1<sup>st</sup> petitioner to grade 1 of the Visakha Vidyalaya, Colombo 05.

It is not in dispute that provisions in the Circular dated 31<sup>st</sup> May 2018 of the Secretary to the Ministry of Education (herein after sometimes referred to as the "Admission Circular") marked "p11" is applicable to the admission of students to Grade One of Government Schools in the respective year the Petitioners preferred their application.

As per the said circular, the Petitioners' application for the admission to grade 1 in 2019 was governed by clause 6.4 of the said circular.

In terms of Clause **6.4(b)** of the Admission Circular, marks under this Category is allocated under six main grounds,

- I. Period of service as a permanent employee in the staff of an institution under Ministry of Education that directly involves in school education (one mark for one year -maximum 20 marks);
- II. **Period of service in difficult schools**
  - **For applicants presently serving in a difficult school without a break (5 marks per year -maximum 25 marks);**

- **For applicants previously served in a difficult school (3 marks per year – maximum 15 marks)  
(half a mark is given for period of 6 months or for the period exceeding 6 months when the applicant has completed a minimum of one-year service).**

**However, this service in a difficult school has to be certified by the relevant Zonal Director of Education.** *(What is highlighted here is found in Clause 6.4 (b) II of the Circular marked P11 and is the most relevant provision for the matter placed before this court)*

- III. Unutilized leave during the last 5 years (2 marks for each 20 days of unutilized leave per year - maximum 10 marks);
- IV. For applicant's service in the same school where child's admission is sought (3 years or more 10 marks, less than 3 years 5 marks – maximum 10 marks);
- V. Distance from present permanent place of residence to the school applied (Within one Km- 10 marks, Between 1Km and 3Km- 8 marks, Between 3Km and 5Km- 6 marks, More than 5 Km – 4 marks-- maximum 10 marks);
- VI. Distance from present place of work to the school applied for (More than 100 Km – 25 marks, Between 70Km and 100Km – 20 marks, Between 40Km and 70 Km- 15 marks, Between 20Km and 40Km- 10 marks, Less than 20Km 5 marks--- maximum 25 marks).

On certain occasions in their petition the Petitioners state that marks were not allocated to the service of the 2<sup>nd</sup> Petitioner in difficult areas. However, this court observes that as per the clause 6.4.(b) II of circular marked as **P11** marks are considered for service in difficult schools and not for the service in difficult areas. As per the said clause service in difficult schools has to be certified by the relevant

Zonal Director of Education in accordance with the Circular No. 2005/01. The Circular No.2005/01 marked as **P19** categorizes types of schools and gives directions on how to categorize schools within different Provinces into five categories, namely very convenient, convenient, not inconvenient, difficult or very difficult. Thus, it is clear that to prove infringement of fundamental rights as alleged by the Petitioners, the Petitioners must prove that the 2<sup>nd</sup> Petitioner serves or served in a difficult school.

It is not in dispute that the 2nd petitioner at the time she tendered the application for admission was working at Thurstan College, Colombo 07 and the Petitioners do not claim said college as a difficult school, and thus, the Petitioners cannot claim maximum 25 marks or less marks given under the criteria 'presently working in a difficult school without a break for 5 years or less' as per the clause 6.4 (b)– II – a. Then, it needs to be considered whether the petitioners are coming within Clause 6.4 (b) – II – (b) of the Admission Circular as the 2nd Petitioner claims for the service in a difficult school in previous years in relation to her service In Minneriya from 1999 to 2005.

There is no disagreement that the 2nd Petitioner was appointed to the Minneriya Central College, Polonnaruwa (In some documents the name of this school is mentioned as Minneriya National School, Polonnaruwa) with effect from 4th January 1999, where she was assigned to the primary section. She served in the primary section of the above school from 4th Jan 1999 to 25th September 2005 (approximately 6 years and 8 months). It is the stance of the 2nd Petitioner that her service in the said school is a service in a difficult school and, thus, the 1st petitioner should be awarded the 15 marks as per clause 6.4 (b) – II – (b), taking

into consideration the fact that the 2nd petitioner worked in the said school for more than 5 years. However, as evident by the mark sheet marked “**P14**”, the Petitioners were not awarded under the item ‘period of service in difficult schools’ and the reason stated therein is that the Primary School belonging to Minneriya Central College was not a difficult school as per the 2005 CD’. Thereby, the issue before this court is whether the primary section of the Minneriya Central College, Polonnaruwa/ Minneriya National School can be considered as a “Difficult school” for the purposes of allocating marks under Clause 6.4 – II – b.

A careful reading of clause 6.4 of **P 11** makes it apparent that marks are given to service in a difficult school in accordance with the classification found in the Circular No. 2005/01 (**P19**). **P19** categorizes schools and not separate sections of schools. This court observes that as per the material placed before this court the Minneriya Primary School became a separate school only in 2012 under the relevant Provincial Council – vide **P9**. Prior to that it was under the Minneriya National School as its Primary Section. In fact, the 2nd Petitioner’s appointment was to the Minneriya Central College which was named as a National School in 1996 (see **P3, P4, P4A, P4B, P5A, R1** and **R2**). The evidence indicates that she had worked as a primary section teacher in that national school. Even her appointment and transfer stated in **P3** and **P5A** refers to an appointment to a national school and transfer from a national school. In fact, her transfer was termed as a transfer from a National School (Jathika Pasala) to National School (Jathika Pasala)- vide **P5A**. Aforementioned documents submitted by the Petitioners themselves prove that the 2nd Petitioner’s service was as a teacher of Minneriya Central College/ National School. Thus, what is relevant is whether Minneriya National School / Minneriya Central College was a difficult school as

per **P19**. The Petitioners have not placed any material to show that Minneriya Central College or National School was a difficult school as per **P19**. The document marked **P18** reveals Minneriya Central College was considered as a very convenient school as per the census made in 2005. **R1 and R2** also indicate it was considered as a popular school and became a national school in 1996. It is hard to assume that a difficult school would be given the status of a national school or become a popular school. Furthermore, as the circular marked **P19** categorizes only schools and not separate sections of schools, it is not wrong in assuming that the whole school was assessed as one unit for the classification and, as such different sections cannot be considered as having a different classification or rating. On the other hand, if the Petitioners' attempt to show that the primary section of the Minneriya Central College/National College as a separate school to succeed, they must establish at least its administration was separate from the main school by showing that it had a separate principal and an office etc. No sufficient materials were placed before this court by the Petitioners to that effect but the documents marked **P3, P4, P4A, P4B, P5A** and **P8** shows that the 2<sup>nd</sup> Petitioner's appointment was to the Minneriya Central College which was a National School. Her service also was to that school and she was transferred from that national school to another national school, namely Ananda college, Colombo- vide **P5A**. Hence, it is not logical to treat her service as one belonged to a different school other than the Minneriya Central College/National School, even though the primary section was situated on a different location about 1Km away from the main section.

The documents marked as **P9** and **R1** confirms that the Primary section of Minneriya Central College, which located about 1Km away from the main section,

was established as a separate Primary School governed by the Provincial Council in 2012. Based on that, it appears that the Petitioners try to contend that the primary section of Minneriya Central College had all the attributes of a separate school and it has to be considered as a difficult school due to the lack of facilities at the time the 2<sup>nd</sup> Petitioner worked there. This cannot be considered as a tenable contention for many reasons. Firstly, the aforesaid primary school was established in 2012 after 6 years from the transfer of the 2<sup>nd</sup> Petitioner from Minneriya National School ; Secondly, **P9** and **R1** establish that primary section of the Minneriya National School was under the administration of the said national school till 2012.12.31 indicating that the said primary section was part and parcel of the said national school and not a separate school. Thirdly, it appears that the Minneriya Primary School acquired the attributes of a separate school only in 2013 under a new administration, separated from the National school and as a Provincial Council School.

The Circular No, 2005/01 marked **P19** states that it rescinds the circular 1998/47 dated 11.12.1998 which was for the classification of schools for certain purposes prior to **P19**. It should be noted that for the purposes of circular marked as **P11**(Admission Circular) what is relevant is not the previous circulars or their classifications but the classification under the Circular marked **P19**. Irrespective of the fact that relevant person's service was done prior to 2005 or after, for the marks to be given the relevant school has to be a difficult school as per circular marked **P19**. Minneriya Primary School which was established in 2012 was a nonexistent entity when the circular marked **P19** came into force in 2005. What was in existence was Minneriya National School and the 2<sup>nd</sup> Petitioner was a teacher of its Primary section. Thus, as said before what is relevant for the

Petitioners' application for admission is the category of the Minneriya National School as per **P19**. However, it appears that after the establishment of the Minneriya Primary School as a separate entity in 2012, it has been classified as a convenient school in 2013 – vide **P18**. As mentioned before the Petitioners have neither placed sufficient material with the application for the interview nor before this court to show that the Minneriya National School was a difficult school as per Circular marked **P19**. What appears to have been submitted with the application for the interview as well as before this court is **P10** which refers to a nonexistent entity at the time of 2<sup>nd</sup> Respondent's service at Minneriya. This certificate marked **P10**, dated 20.09.2017 has been issued by the Principal of Minneriya Primary School and certified by the Zonal Director of Education. It states that the 2nd Petitioner served as a Primary Teacher at the Minneriya Primary School between 04.01.1999 and 25.09.2005, which was a difficult School. Since it appears that the Petitioners are relying heavily on **P10**, it is necessary to comment why it is not acceptable to this court. The following reasons can be emphasized in that regard to show why it is not sufficient or reliable;

- As mentioned before Minneriya Primary school was established in 2012 and, as such, there cannot be a Minneriya Primary School as a separate entity prior to that. Thus, as said before, this certificate has been issued for a school which had no existence during the tenure of the 2<sup>nd</sup> Petitioner in Minneriya area.
- The content of this certificate is contrary to Petitioners own documents marked **P3, P4, P4A, P4B** and **P5A**, owing to the fact that when **P10** states

that the 2<sup>nd</sup> Petitioner was a teacher of Minneriya Primary School, the rest confirms that she was a teacher attached to Minneriya National School.

- What is required by the circular marked **P11** is a certification of service in a difficult school by the Zonal Education Director in accordance with the Circular marked **P19**, namely Circular No.2005/01. The said circular was not addressed to the principals of schools though it was also intended to be distributed among the principals but Zonal directors of Education are among the addressees of the said circular. Thus, it appears to be the duty of the Zonal Directors to classify schools as per the directions and guidance in the said circular. Therefore, it is the Zonal Director of Education who can certify whether one's service was in a difficult school or not and as shown above, that is what is expected by the circular marked **P11**. However, **P10** is basically a certificate issued by the Principal of the Minneriya Primary School. Though he expressed that it is a difficult school there is nothing to indicate whether it is his personal opinion or as per the guidance or directions of the Circular marked **P19**. The Zonal Director of Education has just certified it. It is not clear whether the Zonal Director certified it to indicate that it is a document issued by the relevant Principal, one of his subordinate officers or whether he certified what is stated there as true. However, it is clear that neither the Principal nor the Zonal Director of Education has certified that the service of the 2<sup>nd</sup> Petitioner in Minneriya was a service in a difficult school as per the circular marked **P19**. A mere statement or opinion saying that one served in a difficult school will not suffice for the marks to be allocated as per circular marked **P11**. It should be a certificate from the Zonal Director certifying that relevant person's

service was a service in a difficult school as per circular No.2005/01 marked **P19**. There is no reference to circular marked **P19** in **P10**. On the other hand, Minneriya Primary School was not an entity that existed in 2005, when the circular **P19** was issued, to be classified under the said circular. As per **P18** issued by the Office of the Director of Education (Data Management), it appears that after the establishment of the Minneriya Primary School in 2012, it has been categorized as a convenient school and even in 2005 Minneriya Central College was a very convenient school.

The Petitioners have submitted a self-assessment of the Primary School in her petition, applying criteria in Circular No.2005/01 marked P19 to a factual situation stated by them as that existed during the 2<sup>nd</sup> Petitioner's tenure in Minneriya, to indicate that it was a difficult school. In this regard this court observes as follows;

- This is a self-serving assessment and not an independent one. There is no independent evidence to confirm the factual situation they refer in that assessment.
- Self-assessment has been done by taking the primary section as a separate school but as discussed above it appears that there was no separate school during 2<sup>nd</sup> Petitioner's service in Minneriya except for a separate primary section situated 1Km away from the main school. The Circular marked P19 categorizes schools and not their separate sections and the Circular marked P11 contemplates whether the relevant school is/was a difficult school in giving marks but not its separate sections. Since the 2<sup>nd</sup> Petitioner was a teacher of the Minneriya National School

as established by P3 to P5A, what applies is the category of the said National school.

- Irrespective of whether the service of the relevant person was done prior or after the enforcement of the Circular marked P19, the circular marked P11 considers the categorization of schools as per the circular marked P19 in giving marks. One has to show, to get marks for the service done previously in a difficult school, that he worked in a school for a period exceeding one year and it was a difficult school as per the circular marked P19 ( 3 marks per year subject to a maximum of 15)-vide clause 6.4(b) II(b). Naturally the assessment as per the circular should have been done after the enforcement of the circular in 2005 applying the relevant criteria to factual situation that existed after the enforcement of the relevant circular. As evidenced by the P19 circular itself there had been a previous circular to categorize schools which was rescinded by P19, but what is relevant is whether the relevant school was a difficult school as per P19. As such, applying the criteria in P19 to a factual situation that existed prior to the enforcement of P19, as done in the self-assessment, cannot be considered as the correct way of assessing the school as per P19. For example, one criterion in P19 is the number of useable computers the school has. If this is applied to schools that existed in 1999 which was the year the 2<sup>nd</sup> Petitioner started her service in Minneriya, the balance with regard to assessment of most of the schools would tilt towards the 'difficult school' status. It is the view of this court that what is relevant is not applying the criteria in P19 to a situation in the past, but rather, the assessment/ category of

the school when P19 was applied after its enforcement. Thus, the way the self-assessment is done is also questionable.

- Anyhow, what is required by the Circular marked P11 is not a self-assessment but a certificate from the Zonal Director of Education with regard to the relevant school. Thus, what should have been tendered was a certificate with regard to the Minneriya National School under which the 2<sup>nd</sup> Petitioner did her service. Instead of that what was tendered is a purported certificate (**P10**) with regard to the Minneriya Primary School which came into existence as a separate entity only in 2012.

For the reasons mentioned above this court cannot rely on the self-assessment done by the Petitioners. Merely because St. Paul's Girls' School, Milagiriya gave marks for the 2<sup>nd</sup> Petitioners service in Minneriya considering it as service in a difficult school this court cannot find fault with the Respondent for not giving marks due to the reasons elaborated above. This case is not based on an alleged infringement by the provisions in relevant circulars but, on an alleged infringement caused by not giving marks by the Respondent for the 2<sup>nd</sup> Petitioner's service in the primary section of the Minneriya National School as per the relevant circulars with regard to the application made for the admission for grade one for the year 2019. It is the view of this court that the Petitioners failed in establishing that her service was for a difficult school as contemplated by the said circulars.

Thus, this court cannot find fault with the Respondents. Hence, the application is dismissed. No costs.

Judge of the Supreme Court.

L.T.B. Dehideniya, J

I agree.

Judge of the Supreme Court.

P. Padman Surasena, J

I agree.

Judge of the Supreme Court.