

Judicial Service Commission interviews

07 October 2015, afternoon session

Free State Division of High Court

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Interview of Adv L Le Pohl

Deputy Chief Justice Moseneke: Firstly, I would to apologise for calling you much later than the time we had planned as this was due to circumstances out of control. I know the discomfort of waiting impatiently but we appreciate that you've made your time. Where were you born?

Adv Pohl: I was born in the Free State, Bloemfontein.

Moseneke: Do you think you received a good primary school education?

Pohl: I definitely received a good primary school education.

Moseneke: Were both of your parents alive?

Pohl: Yes, they were alive and supported me throughout my primary school.

Moseneke: Who funded your university?

Pohl: I was funded by my parents in undergraduate and then took out a loan for LLB which I repaid later by working for the Department of Justice and worked on a contract-based for four years.

Moseneke: I noticed that you did your Bachelor of Arts in University of Stellenbosch (USB) and then did you LLB in the University of Free State (UFS).

Pohl: Yes, that is correct.

Moseneke: You did your LLB at a very difficult time in South Africa, 1993 and 1997 as there was a lot of turmoil in the country.

Pohl: It was indeed a very difficult time in the country, especially witnessing people who were detained for political reason and this strike me.

Moseneke: Where are you at the current moment?

Pohl: At the moment, I'm at the Free State Bar.

Moseneke: Your legal background suggests that you've covered and practiced the most parts of the law.

Pohl: Yes, that is correct, except for Labour Law, perhaps.

Moseneke: Why is that so?

Pohl: It is the nature of the work that some attorneys have directives and tend to receive directives on the kind of work to be done.

Moseneke: Have you ever been to the Constitutional Court?

Pohl: I have never been to the Constitutional Court.

Moseneke: Can you live your professional life outside of the Constitution?

Pohl: No, that is impossible, I think the Bill of Rights is the cornerstone of the Constitution and the Constitution needed to be applied to whatever you do in law. You must be conscious of the Constitution all the time.

Moseneke: What do you think is the primary purpose of our Constitution?

Pohl: I would say that it guides and protects the law and that is the main Supreme Law of the country. It also prevents the situation where we would go back to apartheid.

Moseneke: There is of course another part that the Constitution needs to be emphatically transformative.

Pohl: Indeed, Sir.

Moseneke: The Constitution also seeks to move us away from the pre-1994 situation, which is to create an equitable and fair democracy.

Pohl: Indeed, Sir. The preamble in the Constitution clearly states that "people of South Africa need to acknowledge the injustices of the past".

Moseneke: The job of the Commission is to recommend Judges that would embrace the Constitution and its missions, because the Constitution says that "the Judge must take enough to be faithful in accordance with the Constitution" So you could hardly be a Judge if you do not embrace the full mission of our Constitution?

Pohl: Absolutely Sir.

Judge President Molemela: Are you ready for the High Court?

Pohl: Yes, I'm ready for the High Court.

Molemela: I noticed that you only acted for two terms, is that correct?

Pohl: Yes, that is correct. I did Motion Court, Post-Motion Court, Criminal Work Court and Trial Court.

Molemela: Do you think collegiality is important?

Pohl: I do believe that this is important, not only for the social benefit of that but also one gathers the wealth of experience from other Judges that had more experience.

Molemela: Would you be upset if a black candidate, specifically women, was to be appointed over you.

Pohl: No, in fact section 174 (2) says "in appointing Judicial Officers, the person who recommends it should take cognisance of gender and racial representation in South Africa" I believe that I'm experienced and capable of being a Judge in Free State, but if not appointed, I will accept that 100%.

Premier Magashule: What is your understanding of judicial independence?

Le Pohl: My understanding by that is that the Judiciary must uphold the Constitution all the time, apply the law without fear or favour and apply that law in line with the Constitution. The Judge must be objective and not influenced by government or private individual in decision making.

Didiza: Why were your expectations prior to 1994 on the changes that were to be experienced by the country in the process of transition, especially in your field as a lawyer?

Pohl: I thought to myself that the private practice would be a better path and this was my reason for taking such a path. The Constitution was negotiated by the people who were at the Bar and I felt that this was a great thing as it meant that South Africa was moving forward. I was happy when I heard on the news that the Constitution was negotiated and I was very happy and this was also important for me and my wife as we had a young boy who was about to go to school as we thought he would grow up in a safe and prosperous environment.

Didiza: Did you think there was going to be a major change in the practice of law in the new dispensation?

Pohl: I had to adapt to a Constitution that had just been designed and this required a mind shift.

Senior Counsel Advocate Semanya: How would you describe your personal idiosyncrasies?

Pohl: I consider myself to be a private person who likes to be objective and likes the work to be completed as fast and diligent as possible.

Semanya: Have you diffused those idiosyncrasies in your profession?

Pohl: I would like to believe so, if you look at my judgements, they had been delivered within 14 days or quicker. You should get a good judgement in as soon as possible and I tried to do so in my field as I always try my best not to have where judgement is reserved. The fact that I'm a private person suits the job of being a Judge as you need to be on your own to a large extent.

Semanya: What conduct in your opinion that could be construed as Executive excesses? Similarly, what could be construed as judicial overreach?

Le Pohl: The guideline must always be in the Constitution and you must measure all those excesses based on what the Constitution says and take guideline based on that. If there is an excess, then it must be dealt with accordingly. Judicial overreach on my mind is when a Judge pronounces on political issues, in my mind, it is not the job of the Judge to do so.

Semanya: For argument sake, there would be political debates and how would you deal with this?

Le Pohl: You must apply the facts accordingly and give the debate about that to politicians, in my mind.

Semenya: What if Parliament acts outside its mandate?

Pohl: This once again requires the application of law and one should pronounce against that.

Mabunda: I believe you embrace transformation Adv Le Pohl, what transformative agenda do you have in the course of advancing black counsels, especially females?

Pohl: I do embrace transformation. Although it is a generalisation, a lot of white people in South Africa have not done enough for transformation in their lives, especially people my age, and I include myself in this. But, what I have tried to do is to pass the experience that I have gained in my schooling, university and profession by being very active in the training process at the Bar, including female and male advocates.

Mabunda: So would I be correct to say that your approach is more collective than individually? You don't have that kind of transformative agenda, individually?

Pohl: I would say so, Sir.

Professor Ntlama: Is it possible for the political questions to be translated into judicial questions in order to ensure political advancement?

Pohl: No, I think it's far more difficult to answer the question but there might be instances where it might not be appropriate to do so.

Malema: I want to be educated on what is a political question, as Adv Pohl said he was not supposed to pronounce on political questions.

Pohl: The Judge has a right to pronounce on political questions but there are issues that tend to differ between a Judge in the High Court and the Judge in the Constitutional Court.

Malema: But there is no issue that the High Court cannot pronounce on that the Constitutional Court can pronounce on. So it was impossible to say, "I cannot deal with this matter, the Constitutional Court will deal with it". It looks like you're saying there are issues that you cannot handle, which are political in nature.

Pohl: No, what I mean by that is it not up to the Judge of the High Court to pronounce on basis of finality on the issues of Constitutional Court. I apologise if I sounded in any different to that.

Malema: I want you to make it emphatically clear that Judges can pronounce on any matter, whether political, social or religious, as long as there is a dispute on that matter.

Moseneke: I think Mr Malema you should add that provided that the matter is susceptible to legal resolutions, as it was impossible, for example, for Judges to resolve a matter where two villages are disputing about best traditional practice or circumcision. The Judge may be legally incapable to resolve that dispute by application of the law, so anything that is brought before the Judge must be susceptible to law.

Malema: But the example you provided is not political.

Moseneke: Yes, I'm quite aware of that but the candidate has made it clear that there are some issues that could not be resolved, legally, by the application of the law. It is clear Adv Pohl that you have vast experience in the legal field and there is a clear coordination between your qualifications and practical practice. There would be deliberations on the candidate to be chosen by today and you will know the outcome by the end of the day. Thank you for making yourself available and thank you for coming up later.

Pohl: Thank you.