



JUDGES
MATTER

Judicial Service Commission interviews

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Electoral Court

Interview of Ms S Pather

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CJ M. Mogoeng: Good evening, Ms Pather.

Ms S. Pather: Good evening, Chief Justice.

CJ M. Mogoeng: Are you well?

Ms S. Pather: Commissioners. Yes, thank you.

CJ M. Mogoeng: Just tell us in your own words why you want to be a Judge of the Electoral Court.

Ms S. Pather: I feel I can make a contribution. I've been there as it may be known, and I served four years there. I've learned a lot, working with the three Judges – the other members.

CJ M. Mogoeng: You have already served there for four years?

Ms S. Pather: Yes, that's right.

CJ M. Mogoeng: And you found it easy to acclimatise?

Ms S. Pather: Well, not easy. It was quite a learning process and Judge Shawn – under his leadership Judge Shawn Way, we've all been given an equal opportunity to write judgements and develop from that.

CJ M. Mogoeng: Yes. How did you – very briefly – equip yourself for that environment?

Ms S. Pather: They were – they were very supportive there, Chief Justice.

CJ M. Mogoeng: I meant more about – I'm sorry to interrupt you.

Ms S. Pather: Okay.

CJ M. Mogoeng: I meant more about knowledge in relation to how political parties operate.

Ms S. Pather: Yes.

CJ M. Mogoeng: What they're allowed to say and not say – a reflection on the code of conduct that they generally have to sign before the electoral season begins, the regulatory framework and the jurisprudence that has been developed over the years. How did you prepare yourself in relation to those issues? Just say it as briefly as you can without compromising the quality of what you have to say.

Ms S. Pather: Okay. I work always with the legislation of the Act and of course we discuss and talk about matters, but always with the legislation and against the values of the constitution – codes of conduct.

CJ M. Mogoeng: Any other thing you want to say to demonstrate your readiness?

Ms S. Pather: Well, I am up to the challenge and I feel quite confident that if I am given the opportunity this time round, I might be a bit quicker.

CJ M. Mogoeng: Yes. I understand the conclusion. I was asking more about the substance, the meat, the bones. I am ready because of X, Y, Z.

Ms S. Pather: Oh yes, I feel quite committed to the idea of free and fair elections – substantively free and fair elections and I feel it calls for yes, independence, integrity and maturity.

CJ M. Mogoeng: Chairperson?

Mr Shongwe: Thank you, Chief Justice. Well, I need not mention that Ms Pather has worked with me for four years. Ms Pather, as a Judge in the Electoral Court, how have you found collegiality amongst the Judges?

Ms S. Pather: Yes, I felt nothing but support and great collegiality and especially all the members of the Court, including the three Judges, always encouraging members to share experiences, discuss problems. When judgments needed to be written, there were a panel of five.

Mr Shongwe: Have you written some judgments in the Electoral Court?

Ms S. Pather: Yes, I have.

Mr Shongwe: I notice also that you have had an opportunity to act in the Gauteng Division of the High Court. Am I correct?

Ms S. Pather: Yes, that's right.

Mr Shongwe: For how long have you acted in the Gauteng Division?

Ms S. Pather: I was there for just over five weeks and I'd like to add that had it not been for my experience in the Electoral Court, working as part of the team, I might not have had the confidence to rise to the challenge, so when I was invited, I felt quite confident to go.

Mr Shongwe: I see. And in the five weeks that you have acted, have you written some judgments?

Ms S. Pather: Yes, several.

Mr Shongwe: Several? Have any of those judgments been reported? Do you know?

Ms S. Pather: I am aware of one in particular. I can't remember the details, but yes, I am aware of one. I think it involves the Municipality.

Mr Shongwe: It didn't involve any electoral jurisprudence?

Ms S. Pather: No.

Mr Shongwe: Thank you, Chief Justice. I've got no further questions.

CJ M. Mogoeng: Thank you, Chair. Commissioner Msoni?

Mr Msoni: Thank you, Chief Justice. Good afternoon, Ms Pather.

Ms S. Pather: Good afternoon, Commissioner.

Mr Msoni: Ms Pather, I've got just two questions for you. I'm looking at the booklet that gets prepared by the Democratic Governance and Rights Unit.

Ms S. Pather: Yes.

Mr Msoni: And it puts together this document for our benefit and I was looking at the judgment that you have written. You hand down judgments, from at least the judgments that are cited here fairly quickly, but there's just one judgment where you almost took a year to deliver and that was Imatho versus eThekweni Municipality. It is recorded that the matter was heard on the 26th of April 2011 and judgment was delivered on the 14th of April 2012. Are you able to give an explanation in that regard, given the fact that in the Electoral Court, as it has been alluded to earlier, in respect of other candidates, judgments have to be issued promptly, because of the nature of the work.

Ms S. Pather: Yes, Commissioner. I am aware, and I have never fallen into that situation again, as I've been working now, I've been – I realised at that time that the sooner one gets to write – and the mistake I made in those days, that early days was that I left the most challenging matters to the last – to the end and that's how I got into that situation.

Mr Msoni: So, basically lessons have been learned. These kind of things will never be repeated again?

Ms S. Pather: No.

Mr Msoni: And then, the last question, there's a judgment that again has been referred to you here, The Democratic Alliance & Another versus The African National Congress. I like the approach you took, because it is an approach that adopted flexibility in applying the electoral legislation.

Ms S. Pather: Yes.

Mr Msoni: Are you able to contrast that judgment against the NFP judgment, where perhaps the Electoral Court might not have been as flexible as it was, when it comes to this case. Where perhaps others might have failed, there was a mechanical

application of the Act vis-à-vis the flexibility approach that you take here. I'm not sure if Mr Singh likes this one. Thank you.

Ms S. Pather: Yes, I think that the facts perhaps were slightly different there, Commissioner, but...

Mr Msoni: Sorry, CJ. What is your view? Should we apply the electoral legislation mechanically or should we rather adopt a flexibility approach, because here the allegation was that something was submitted almost five minutes after the closing of the submission. Thank you.

Ms S. Pather: Well, I would look at it holistically and you know and look at the entire circumstances and the intention and what prejudice may result, and those aspects would be fully canvassed and considered.

CJ M. Mogoeng: Thank you. Commissioner Singh?

Mr Singh: Thank you very much, Chief Justice and good evening, Ms Pather.

Ms S. Pather: Good evening, Commissioner.

Mr Singh: Two questions. On page 3 of your questionnaire, Item 8, "Please furnish particulars of your membership of any political organisation, past and present." You mentioned the South African Communist party and you say you've been a member for plus minus three years. Are you still a member and when was this plus minus three years?

Ms S. Pather: No, that was some time ago. Once I was invited to act in the High Court, then I gave up my membership.

Mr Singh: So you're not actively involved with any political party?

Ms S. Pather: No.

Mr Singh: Okay, my second question is, I see you're working as a Consultant and not a practising attorney.

Ms S. Pather: Yes, that's right.

Mr Singh: So, I just wanted to know about availability and short notice, because Judge Shongwe will tell you that overnight the Court sometimes has to be convened.

Ms S. Pather: Yes.

Mr Singh: You know, to deal with matters, because of the import of the matters and if you are appointed or if you are recommended for appointment, what is the position with regards to your availability at short notice?

Ms S. Pather: Yes, Commissioner Singh, I've always seen that as a priority, whenever there was a matter and I was called upon to be available, I would ensure that I was available.

Mr Singh: Thank you, Chief Justice.

CJ M. Mogoeng: Thank you, Commissioner Singh. Commissioner Mpofo?

Mr Mpofo: Thank you very much. Good evening, Ms Pather.

Ms S. Pather: Good evening, Commissioner.

Mr Mpofo: Yes, I just wanted to ask, just to related and general questions, one is about Multi-Party Democracy. As you know, in terms of Section 1 of the Constitution, one of our values is Multi-Party Democracy and in respect of that, one of the issues that has been debated, for example – which I'm not sure if it came to the Electoral Court or just to the High Court, was a requirement for new parties to pay a huge deposit before they can contest an election. Would you agree that that might be a deterrent or something that works against the value of Multi-Party Democracy in terms of encouraging competition and the next question I just want to

ask, number one, what are your views about the recent secret ballot judgment in relation to the role of political parties vis-à-vis the oath of office that has taken by MPs.

Ms S. Pather: The deposit – I'm sure that where there's circumstances that encourage democracy, deepening democracy participation, then those matters need to be looked at. You know, there should never be any measure that prevents participation and secret ballot, I think that each case must be determined on its own merits, whether there is a need – whether there is a need for openness, but of course, personally I always would prefer transparency, but there may be special circumstances that dictate otherwise.

Mr Mpofu: Thank you.

CJ M. Mogoeng: Thank you, Commission Mpofu. Ms Pather, you're excused. Thank you.

Ms S. Pather: All right. Thank you, Chief Justice, Commissioners.

CJ M. Mogoeng: Colleagues, it's time for deliberations. If the room could be cleared please.