

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 790 of 2025****In R/SPECIAL CIVIL APPLICATION/443/2024****With****R/LETTERS PATENT APPEAL NO. 791 of 2025****In R/SPECIAL CIVIL APPLICATION NO. 7204 of 2023**

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NILESHKUMAR CHIMANBHAI Padhiyar**Versus****ELECON ENGINEERING CO. LTD.**

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Appearance:**MR PARESH J BRAHMBHATT(9788) for the Appellant(s) No. 1****MR DIPAK R DAVE(1232) for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 19/08/2025****COMMON ORAL ORDER****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. **ADMIT.** Learned advocate Mr. Dipak Dave waives service of notice of admission on behalf of the respondent – Elecon Engineering Company Ltd. (hereinafter referred to as “the respondent - Company”).

2. With the consent of the learned advocates appearing for the respective parties, the matters are taken up for final hearing and are disposed of by this common judgment and order.

3. The captioned Letters Patent Appeals, filed under Clause 15 of the Letters Patent, 1865, are directed against the common judgment and order dated 24.12.2024 passed in Special Civil Application No. 443 of 2024 and Special Civil Application No. 7204

of 2023, wherein the learned Single Judge has disposed of the writ petitions one filed by the petitioner – Nileshkumar Chimanbhai Padhiyar in Special Civil Application No. 443 of 2024, seeking modification of the award dated 08.12.2022 passed by the Labour Court, Anand in Reference (T) No. 41 of 2014, to include full back wages for the period from 30.12.2013 to 08.12.2022, and another filed by the respondent – Company in Special Civil Application No. 7204 of 2023, challenging the said award granting reinstatement with continuity of service without back wages. The petitioner – workman had raised a demand for reinstatement with full back wages and continuity of service, which culminated into the reference proceedings.

4. The Labour Court partly allowed the reference proceedings in favour of the appellant – workman, directing the respondent – Company to reinstate the appellant with continuity of service on his original post but without back wages.

5. The primary issues before the learned Single Judge and now before us are, whether the appellant – Nileshkumar Chimanbhai Padhiyar was wrongfully terminated by the respondent, – Company, whether he is entitled to the full back wages, and whether the Labour Court erred in classifying him as a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 (“the I.D. Act”). The appellant alleges that his termination on 30.12.2013 was illegal, without due process, and in violation of the provisions of the I.D. Act. The respondent – Company contends that the appellant

was not a “workman” as defined under Section 2(s) of the I.D. Act and that his termination was lawful as per the conditions of his appointment letter.

6. The facts, as emerging from the petitions, reveal that the appellant – Nileshkumar Chimanbhai Padhiyar was employed by the respondent – Company, initially as a Technical Apprentice on 16.12.2002, and thereafter, on 15.12.2003, as a Trainee Engineer. Subsequently, after completing one year, he was appointed as a Junior Engineer on 08.12.2006, followed by the issuance of an order of permanency. Subsequently, the appellant was promoted to Senior Engineer. Although, the appellant – workman claims to have performed technical duties akin to those of a workman, he has expressly conceded, both through material on record and in his cross-examination, that he was serving as a Senior Engineer, supervising 8 to 10 Junior Engineers under Mr. Gautambhai Thakore. Consequently, he cannot claim benefits as a “workman” under the I.D. Act.

“4.1. The petitioner-Company was facing difficulties and hardships and it was difficult to save the company in view of the rumours spread in the market with regard to unsound financial conditions of the company. The petitioner has decided form scheme with regard to voluntary resignation of the employees. It was discussed among several employees as to whether the said employees would like to continue with the company or would like to part ways by finding new employment. The employees on their own decided to part their ways and some of the employees were terminated in accordance with the terms of their contract. Around 676 employees out of 1300 employees have put their resignation and amount of Rs.8,24,68,297/- was paid to such employees. Out of 676 employees 18 employees have raised industrial dispute challenging

to such resignation. Some of the employees challenged the resignation on the ground that they have never tendered resignation and documents does not contain their signature and they have been illegally retrenched in violation of section 25(a) of the I.D. Act. Some of the employees have alleged that they have been forced to resign and the resignation is not voluntary. Remaining employees stated that they were assured that after 2 to 3 months they would be taken back and that is how they have resigned from the services. The terms of the reference suggests that the learned labour Court was directed to decide that whether the respondents are entitled to reinstate with continuity of service and 100% back wages or not.”

7. The appellant's services were terminated with effect from 31.12.2013 by an order dated 30.12.2013, pursuant to the conditions of his appointment letter, citing global recession and financial constraints necessitating manpower reduction. The appellant – workman was paid his legal dues, including notice pay and gratuity, which he accepted without protest. The appellant raised an industrial dispute, alleging illegal termination, which was referred to the Labour Court, Anand, as Reference (T) No. 41 of 2014.

8. In the reference proceedings before the Labour Court, two primary issues were determined: (i) whether the appellant falls within the definition of “workman” under Section 2(s) of the I.D. Act; and (ii) whether his termination was illegal and in violation of the provisions of the I.D. Act. The Labour Court, after analyzing the evidence, held that the respondent's plea that the termination was in accordance with the appointment letter was unbelievable and lacked evidentiary basis. It is further found that the termination was effected without complying with due process of law, violating the

provisions of the I.D. Act, and was thus illegal. Consequently, the Labour Court directed reinstatement with continuity of service but denied full back wages. The respondent – Company challenged this award in Special Civil Application No. 7204 of 2023, while the appellant challenged the denial of back wages in Special Civil Application No. 443 of 2024. The learned Single Judge disposed of both petitions, leading to the present appeals.

9. Learned advocate Mr. Paresh Brahmbhatt, appearing for the appellant – workman, submits that the learned Single Judge erred in not granting full back wages for the period from 30.12.2013 to 08.12.2022, during which the appellant – workman was forcibly kept out of service. He contends that the Labour Court, having found the termination illegal, should have awarded full back wages, as the appellant suffered significant financial losses due to the respondent's unlawful actions. He further submits that the Labour Court correctly held the appellant as a "workman" under Section 2(s) of the I.D. Act, as the respondent – company failed to produce documentary evidence proving that the appellant was performing supervisory duties.

10. Mr. Brahmbhatt, learned advocate argues that, despite the appellant's designation as a Senior Engineer, his duties were primarily technical, akin to those of a workman, and that the respondent's failure to produce evidence of supervisory functions justified the Labour Court's adverse inference against the respondent. He relies on the oral evidence of the appellant, who

denied performing supervisory roles, and the respondent's witness, who failed to substantiate claims of supervisory duties.

11. Learned advocate Mr. Dipak Dave, appearing for the respondent – Company, submits that the learned Single Judge's judgment should not be interfered with, as it was based on a thorough examination of the evidence. He relies on the decision rendered in Special Civil Application No. 1869 of 1999, where a Junior Engineer of the respondent – Company was held not to be a "workman" under Section 2(s) of the I.D. Act. Mr. Dave, learned advocate argues that the appellant, while working as a Senior Engineer was drawing a salary of Rs.29,887.73/- per month, and was performing supervisory and administrative duties, as admitted by him in his cross-examination, where he confirmed supervising 8 to 10 Junior Engineers.

12. Mr. Dave, learned advocate further submits that, the Labour Court erred in holding the appellant as a "workman" without discharging his initial burden of proving the status of workman under Section 2(s) of the I.D. Act, as per the Supreme Court's ruling in Lenin Kumar Ray v. M/s. Express Publications (Madurai) Ltd., (2024) AIR SC 5409. He contends that the termination was lawful, in accordance with the appointment letter, and the appellant accepted his dues without protest, negating any claim of illegality.

13. We have heard the learned advocates appearing for both the parties at length.

14. The dispute revolves around two principal issues: (i) whether the appellant can be classified as a “workman” within the meaning of Section 2(s) of the I.D. Act; and (ii) whether the termination of his services on 30.12.2013 was illegal, entitling him to reinstatement with full back wages. The dispute has arisen due to voluntary resignation scheme introduced by the company which was introduced due to recession and financial crunch.

15. On the issue of the appellant’s status as a “workman,” it is not in dispute that the appellant has admitted that he was initially appointed as a Trainee Engineer, and subsequently as a fixed time Contractual Junior Engineer from 16.12.2006 to 15.12.2008, later on he was promoted as Senior Engineer. The appellant contends that, he performed technical duties akin to those workmen, but the material on record and his own admissions in his affidavit before the Labour Court, he stated that he was serving as a Senior Engineer at the time of his termination. It is surprising to note that in his evidence before the Labour Court, he has admitted that he is not aware about the salary, he was getting as a Senior Engineer. This supervisory role, coupled with his monthly salary of Rs. 29,887.73/- far exceeding the statutory limit of Rs. 10,000/- under Section 2(s) of the I.D. Act, precludes him from claiming benefits as a “workman.” It is also not in dispute that the post on which the appellant was working has been abolished.

16. The Labour Court’s finding that the appellant was a

“workman” was based on the respondent’s failure to produce documentary evidence of supervisory duties. However, as held by the Supreme Court in Lenin Kumar Ray (supra), the burden lies on the employee to establish that they fall within the definition of “workman.” The appellant failed to produce evidence demonstrating that his duties were primarily technical or manual, despite his promotion as a Senior Engineer. The reliance, on the absence of documentary evidence by the respondent, was misplaced as the respondent cannot be compelled to produce non-existent documents.

17. We concur with the learned Single Judge’s finding that the appellant does not fall within the definition of “workman” under Section 2(s) of the I.D. Act, given his supervisory role, salary, and the lack of evidence to the contrary. The decision in Special Civil Application No. 1869 of 1999, involving a Junior Engineer of the same company, further supports this conclusion, as it held that such employees, engaged in supervisory functions, do not qualify as workmen. In the instant case, the appellant was serving as a Senior Engineer.

18. On the issue of illegal termination, the Labour Court found that the respondent terminated the appellant’s services without due process, violating the provisions of the I.D. Act. However, this finding is contingent on the appellant being a “workman.” Since we have concluded that the appellant does not qualify as a “workman”, the provisions of the I.D. Act, including Section 25F,

25G, 25H, and 25N, do not apply. The termination was effected due to the scheme.

19. The appellant's claim for full back wages in Special Civil Application No. 443 of 2024 is premised on the illegality of his termination. Given our finding that the appellant is not a "workman" and that the termination was lawful, the question of back wages does not arise.

20. We have also examined the provisions of Section 23 of the Model Standing Orders, which govern the termination of the permanent workmen. These provisions apply to the workmen employed on non-monthly rates or monthly rates, requiring notice or payment in lieu thereof. However, as the appellant is not a "workman" under the I.D. Act, these provisions are inapplicable. The Labour Court's finding that the respondent violated Section 23(1) of the Model Standing Orders is, therefore, unsustainable.

21. The Labour Court also erred in invoking Section 25N of the I.D. Act, which governs retrenchment of workmen, as the appellant's termination does not qualify as "retrenchment" under Section 2(oo) of the I.D. Act. The termination was a simple discharge under the terms of the appointment letter, and not a retrenchment requiring compliance of Section 25N of the ID Act or related provisions.

22. On overall appreciation of the facts, we find no compelling

reason to interfere with the judgment and order of the learned Single Judge. The Labour Court's award, to the extent of holding the appellant a "workman" and the termination as illegal, is unsustainable. Consequently, the appellant's claim for full back wages in LPA No. 790 of 2025 and the challenge to the reinstatement order in LPA No. 791 of 2025 cannot be sustained.

23. Hence, the appeals fail. The same are dismissed, accordingly.

Registry is directed to place a copy of this order, in each of the captioned matter(s).

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(R. T. VACHHANI, J)

MVP/17-18

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 25/08/2025 10:46:46