reduction to a lower stage, which in the case of withholding of increments with cumulative effect does not at all arise. In cases where the increments are withheld with or without cumulative effect, the Government employee is never reduced to a lower stage. In this view of the matter, we find that the stoppage of increments with cumulative effect is a minor penalty and would fall under clause (iv) and not under clause (v) which is part of major penalty. In the view we have taken, with respect, we find that the view enunciated in *Ram Lubhaya's case* (supra) does not lay down a correct law and is accordingly over-ruled. Further, in *Balkar Singh's case* (supra), there is no discussion on this aspect of the matter and the learned Single Judge has merely followed the decision in *Ram Lubhaya's case* (supra), with the result that the decision in *Balkar Singh's case* (supra) is also over-ruled.

(9) No other point arises for consideration.

(10) For the reasons recorded above, we find no merit in this petition, and, consequently, dismiss the same, but without any order as to costs.

N. K. S.

Before J. V. Gupta, J.

CHANDER MOHAN MITTAL,—*Petitioner.*

versus

SHRI BIHARI LAL GUPTA,—*Respondent.*

Civil Revision No. 2013 *of* 1984.

March 1, 1985.

East Punjab Urban Rent Restriction Act (III of 1940) *(as applicable to Chandigarh)—Section* 15(1) *(b)* & (5)*—Order directing ex parte proceedings against tenant passed by the Rent Controller set aside by the Controller—Landlord filing appeal against such order—Such appeal—Whether maintainable—Remedy of landlord in such cases—Whether lies in filing of revision to the High Court.*

Held, that the setting aside of *ex parte* proceedings is inherent in the Rent Controller and it was in the exercise of that power that the order proceeding *ex parte* against the tenant was set aside.

Such an order was also not appealable under the provisions of the Code of Civil Procedure. Thus, the Rent Controller was exercising the inherent powers and not the powers under the East Punjab Urban Rent Restriction Act, 1949, then it could not be held that any order itself passed by the Rent Controller becomes appealable under section 15(1) (b) of the East Punjab Urban Rent Restriction Act. The appeal is contemplated against an order passed by the Controller. The term 'Controller' under section 2(b) of the Act means any person who is appointed by the State Government to perform the functions of a Controller under the Act. By no stretch of imagination it can be said that the order setting aside the *ex parte* proceedings against the tenant was passed by the Rent Controller under the Act. In this view of the matter, no appeal is maintainable against the impugned order and the only remedy against such order was to file a revision to the High Court under Section 15(5) of the Act which contemplates that the High Court may at any time call and examine the records relating to "any order" passed or "proceedings taken" under the Act.

(Para 4).

Petition under Section 15(5) *of the East Punjab Urban Rent Restriction Act and Section* 151 *C.P.C. for revision of the order of the court of Shri B. S. Nehra, District Judge, Chandigarh (Exercising the powers of Appellate Authority, under the East Punjab Urban Rent Restriction Act*, 1949), *dated the* 11*th June*, 1984 *reversing that of Shri A. S. Narula, Rent Controller, Chandigarh, dated the* 27*th October*, 1983 *setting aside the impugned order of the trial court and dismissing the tenant's application for restoration and allowing* 3 *months' time to vacate the premises in dispute and deliver its possession to the landlord.*

Mohan Jain, Advocate, *for the Petitioner.*

R. K. Mahajan, Advocate, *for the Respondent.*

JUDGMENT

J.V. Gupta, J.

(1) Order for *ex parte* proceedings against the tenant passed by the Rent Controller was set aside by him,—*vide* order dated 27th October, 1983. Dissatisfied with the same, the landlord Bihari Lal Gupta, filed an appeal before the Appellate Authority. An objection was raised on behalf of the tenant that the appeal against the said order of the Rent Controller was not maintainable and that the landlord could only assail the impugned order passed by the Rent

Controller, in the High Court in revision. In support of the contention, reliance was placed on *Bikramjit Singh Paul* Versus *Jaswant Singh,* (i) wherein it was held that an order refusing to set aside *ex parte* decree entitles an aggrieved party to maintain a revision and not an appeal. Reliance was also placed on the Full Bench judgment of this Court in *M/s Daya Chand Hardayal* Versus *Bir Chand,* (2) However, the Appellate Authority distinguished the same on the ground that under the notification issued by the Union Territory, Chandigarh Administration,—*vide* No. 4612-LD-72/6843, dated 25th November, 1972, the District Judge, Chandigarh, had been invested with the powers of the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act). According to the Appellate Authority section 15(1) (b) of the Act *inter alia* provided that any person aggrieved by an order passed by the Controller may, within 15 days from the date of such order, prefer, in writing an appeal to the Appellate Authority, having jurisdiction. Thus, according to it, the cumulative effect of the provisions of section 15, and the notification issued by the Union Territory Administration, Chandigarh, dated 25th November 1972 mentioned above, was that all the orders passed by the Rent Controller under the Act were appealable, hence it was held that the appeal was maintainable against the impugned order. Ultimately, the appeal setting aside the order proceeding *ex parte* against the tenant was set aside. Dissatisfied with the same, the tenant has filed this revision petition in this Court.

2. The learned counsel for the petitioner contended that in view of the Full Bench judgment of this Court in *M/s Daya Chand Hardayal's case* (supra), no appeal against the order of the Rent Controller setting aside the *ex parte* proceedings against the tenant was maintainable. According to the learned counsel, even under the Code of Civil Procedure, (hereinafter called the Code), such an order was not appealable under Order XLIII rule 1. On the other hand, the learned counsel for the landlord-respondent submitted that the above-said Full Bench judgment of this Court, was distinguishable as there was no notification as regards the Union Territory of Chandigarh authorising the Appellate Authority to hear appeals only against the orders passed by the Rent Controllers under sections 4, 10, 12 and 13 of the Act, as was provided,—*vide* Punjab Government notification, dated 14th April, 1947. Thus argued the learned counsel, in the absence of any such notification,

(1) 1977 (2) R.L.R. 363.
(2) AIR 1983 Pb. and Hary. 356.

any order passed by the Rent Controller was appealable under section 15 of the Act. The learned counsel specifically pointed out that under section 15(1) (b) of the Act, any person aggrieved by "an order" passed by the Rent Controller may prefer an appeal to the Appellate Authority having jurisdiction. Since the order dated October 27, 1983, setting aside the *ex parte* proceedings was passed by the Rent Controller under the Act, the same was appealable under section 15(1) (b). According to the learned counsel in the absence of any notification of the nature as issued by the Punjab Government,—*vide* notification, dated Auril 14, 1947, the Appellate Authority was competent to hear the appeals in the Union Territory of Chandigarh against any order passed by the Rent Controller.

3. After hearing the learned counsel for the parties I find force in the contention raised on behalf of the petitioner.

4. It is true that it has been observed in paragraph 16 of the Full Bench judgment of this Court in *M/s Daya Chand Hardayal's case* (supra), as follows:—

> "On a true perspective of the legislative background, the language of the Act and in particular of the relevant notifications, I would hold that Notification No. S.O./71/HA-II/73/S-15/78, dated May 8, 1978, is confined only to the forum for the appellate jurisdiction and in no way affects the classes of cases which alone had been earlier made appealable by Notification No. 1562-CR 47/9228, dated 14th April, 1947, which continues to hold the field. Thereunder, the orders made by the Rent Controller under sections 4, 10, 12 and 13 of the Act alone are appealable. The answer to the question posed at the outset has thus to be rendered in the negative."

but it could not be successfully argued on behalf of the respondent that in the absence of any such notification, every order passed by the Rent Controller was appealable. Section 15(1) (b) of the Act provides that any person aggrieved by an order passed by the Controller may prefer an appeal, but it does not mean that it includes any order of any nature which the Rent Controller may pass while deciding an ejectment application under the Act. Setting aside the *ex parte* proceedings is inherent in the Rent Controller and it was in the exercise of that power that the order proceeding *ex parte* against the tenant was set aside. It is

the common case of the parties that such an order was not appealable under the Code. Thus, while the Rent Controller exercise the inherent power and not the powers under the Act, then, it could not be held that any order itself passed by the Rent Controller becomes appealable under section 15(1)(b) of the Act. An appeal is contemplated against an order passed by the Controller. The term "controller" under section 2(b) of the Act means, any person who is appointed by the State Government to perform the functions of a controller under the Act. By no stretch of imagination, it can be said that the order setting aside *ex parte* proceedings against the tenant was passed by the Rent Controller under the Act. As observed earlier, such an order was passed by him in the exercise of his inherent powers and, therefore, no appeal as such was competent against such an order. The only remedy against such an order was to file a revision to this Court under section 15(5) of the Act, which contemplates that the High Court may at any time and examine the records relating to "any order" passed or "proceedings taken", under the Act. Thus, distinction itself has been made under section 15(1) (b) and 15(5) of the Act. Section 15(1) (b) contemplates an order passed by the Rent Controller whereas section 15(5) contemplates that the High Court may at any time on the application of any aggrieved party or on its own motion call and examine the records relating to "any order" passed or "proceedings taken", under the Act. In this behalf the *ratio* of the judgment of this Court *in Bikramjit Singh Paul's case* (supra), is relevant where in the order of the Rent Controller refusing to set aside the *ex parte* order for ejectment of the tenant was challenged in revision in this Court. Therein, it was held that the legal position, therefore, is that against an order passed by the Rent Controller refusing to set aside an *ex parte* ejectment order no appeal lies before the Appellate Authority and only a revision against such an order lay to the High Court against that order under section 15(5) of the Act. It may be pointed out that under the Code, an order refusing to set aside the *ex parte* decree is appealable under Order XLIII rule 1 of the Code, but even then, the order setting aside the *ex parte* proceedings against the tenant having not been passed by the Controller as such was not appealable under the Act. Viewed from any angle, it could not be contended that "any order" passed by the Rent Controller while taking proceedings under the Act, is appealable under section 15(1) (b) of the Act even if it be assumed that there was no specific notification applicable to the Union Territory of Chandigarh specifically providing that appeals will be laid against the orders of

the Rent Controllers under sections 4, 10, 12 and 13 of the Act, before the Appellate Authority.

5. In this view of the matter, this petition succeeds and is allowed. The order of the Appellate Authority is set aside and that of the Rent Controller setting aside the *ex parte* proceedings against the tenant, dated October 27, 1983, is restored with no order as to costs. However, the parties have been directed to appear before the Rent Controller on March 15, 1985. Since the ejectment of the tenant is being claimed on the ground of personal necessity, it is directed that the hearing of the ejectment of the application be expedited.

H. S. B.

FULL BENCH

Before R. N. Mittal, K. S. Tiwana & S. S. Dewan, JJ.

STATE OF HARYANA,—*Appellant.*

versus

ISHER DASS,—*Respondent.*

Criminal Appeal No. 434-*DBA of* 1982.

March 14, 1985.

Prevention of Food Adulteration Act (XXXVII of 1954)—*Sections* 7 & 16—*Prevention of Food Adulteration Rules,* 1955—*Rules* 7, 17, 18 & 22-*A*—*Procedure for despatch of samples to a Public Analyst as contained in Rules* 17 *and* 18—*Provisions of these rules*—*Whether mandatory*—*Non-observance of these rules*—*Whether vitiates the entire proceedings.*

Held, that the procedure provided by rule 17 of the Prevention of Food Adulteration Rules, 1955 is very important and the formalities provided in it have to be observed. If any of these formalities is not complied with, then the entire proceedings are vitiated. The purpose of the rules is to ensure the identity of the sample till it reaches the Public Analyst for analysis. It has to be ensured that the sample is not tampered or changed during transit to the office of the Public Analyst. To ensure that the sample which was seized by the Food Inspector, reached the Public Analyst, it is provided in